

COUNCIL MEETING

SEPTEMBER 24, 2014

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro, at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, September 24, 2014 at 9:11 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum *(excused 9:15 a.m. to 10:51 a.m.)*

Honorable Mason K. Chock, Sr.

Honorable Gary L. Hooser

Honorable Ross Kagawa *(present at 9:11 a.m.)*

Honorable Mel Rapozo *(present at 9:12 a.m.)*

Honorable JoAnn A. Yukimura *(present at 9:11 a.m.)*

Honorable Jay Furfaro

RICKY WATANABE, County Clerk: Chair, the other members are here.

Council Chair Furfaro: Okay, well, let us gather them up, please.

(Councilmember Kagawa and Councilmember Yukimura were noted as present.)

Council Chair Furfaro: I would like to get an approval of the agenda for today, but before I do, I want to let you know my intent today, we have a rather full agenda. We have it full with Executive Sessions. I will go through the approval of minutes, the Consent Calendar, then I will only take the first two (2) Communications, then possibly go to the Committee Reports all the way through to the Committee of the Whole, and then probably to the Executive Sessions.

(Councilmember Rapozo was noted as present.)

Council Chair Furfaro: Then come back from the Executive Sessions to take the other Communications associated with those Executive Sessions. I would also like to, after the first two (2) Communications, I would like to give Mr. Rapozo his time for his Resolution. So, that might be early on here, but all those who are wishing to give public comment because of their time restrictions, I hope you have signed up. We will go ahead and move to get the approval of the agenda as such. May I get an approval?

APPROVAL OF AGENDA.

Councilmember Chock moved for approval of the agenda as circulated, seconded by Councilmember Yukimura, and unanimously carried.

Council Chair Furfaro: Would the Clerk read the public comment period?

Mr. Watanabe: We are on (D), Public Comment.

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Council Chair Furfaro: Thank you for reading that. Let us get the approval on the minutes.

MINUTES of the following meeting of the Council:

August 13, 2014 Council Meeting
August 13, 2014 Public Hearing re: Bill No. 2548, Bill No. 2549, and Bill No. 2550
August 20, 2014 Special Council Meeting
August 27, 2014 Council Meeting

Councilmember Kagawa moved to approve the Minutes as circulated, seconded by Councilmember Rapozo, and unanimously carried.

Council Chair Furfaro: Who do we have signed up?

Mr. Watanabe: Chair, we have two (2) speakers signed up for public comment. The first speaker is Gary Pierce, followed by Glenn Mickens.

Council Chair Furfaro: Gary, come right up. Gary, during this public speaking time, you have three (3) minutes. There is no questions and answers (Q&A). It is for the convenience of delivering your testimony. You can start by introducing yourself for the record.

There being no objections, the rules were suspended to take public comment.

GARY PIERCE: Thank you. My name is Gary Pierce. The Council should pass comprehensive tax reform based on the purchase price with a single rate that is fair to all without singling out specific non-voting categories (i.e. Time Share and Hotel). This is taxation without representation.

(Councilmember Bynum was noted as excused.)

Mr. Pierce: Also, the Residential versus Homestead is a possible violation of Hawai'i State Law Fair Housing Act under the familial status, another unforeseen consequence. The socialist policies of the Council must be overturned. The tax is not the problem. The government is the problem. Tim Bynum and JoAnn Yukimura, you are the main reason that the cap was overturned. In six (6) years, the Council under the guidance of Mr. Steve Hunt, your Finance Director, has bankrupt the County. However, you have fired your County Auditor. Why? Mr. Hunt's Department has more than double personnel during this time. By Steve's own words, he cannot make a return on his investments on Kaua'i and thus elsewhere. Currently, the County has been passing

tax increases that are cost creating, not producing revenue, but less revenue due to administrative cost, government regulations, inspections, and lawsuits; another unforeseen consequence. This will be seen by all the reform measures coming up today. In my opinion, the County is run by a criminal enterprise, government, who steals from the citizens for their own benefit, Carvalho taking the Fifth, Bynum suing the County, and the budget you folks want to raise. You cannot even manage your own Bond Fund. The government has operated on political favoritism, selective enforcement, and the socialist policies and laws you have created have bankrupt the County both economically moral, and you have created class warfare. Also, the first time I testified this year when I came before the County, I was treated with significant disrespect by JoAnn. She was putting on her makeup while I was testifying, getting ready for her testimony. That is all I have to say.

Council Chair Furfaro: Thank you for your comments.

Mr. Pierce: Thank you, sir.

Council Chair Furfaro: The next signed up speaker for this three (3) minute period.

Mr. Watanabe: Glenn Mickens.

Council Chair Furfaro: Glenn.

GLENN MICKENS: Thank you, Jay. You have a copy of an Office of Information Practices (OIP) opinion. I hope you will read it. I am only referring this opinion because I question the, and again, I am not questioning Jay. He is the Chair. I think he can do what he wants to do, but according to OIP opinion, if you will read this and you have a copy of it, the public has three (3) minutes. If they want to take four (4) items off of the agenda, they have three (3) minutes for each of these things. The bottom of the thing says HCDA, which the OIP ruled on, was called a "Board." They also said that this Council is a Board. So, this Board should abide by those rules. So, I have two (2) agenda items that I have taken, and I just respectfully ask that I have my three (3) minutes to be able to go ahead and have those things. You have a copy of my testimony. If you have any...

Council Chair Furfaro: Excuse me for a moment, Glenn.

Mr. Mickens: Yes.

Council Chair Furfaro: Members, as I am a man who follows the rules, I would like to have a moment to respond before I start Mr. Mickens commentary on his many requests. Will you make an exception to the rules for me to respond to Mr. Mickens? Thank you.

Glenn, first of all, you have challenged me on OIP before, and I want to make sure you understand. We have very old rules, we have very traditional rules, and we made an exception to the rules a few years ago under my Chairmanship to allow people to speak in advance of the item that is coming up by way of giving this extra time. As three (3) increments so that people could plan on when they wanted to speak, very similar to when we have a 1:30 p.m. scheduled public hearing. People know time specific. The OIP opinion that you have, I will send again to the County Attorneys, but it is my opinion that I am not taking away your opportunity to speak, and that is what is getting confused. You have an opportunity to speak

every time an agenda item comes up. This particular rule that we refer to in Section D is providing an opportunity to take testimony at a specific convenient time, and that is what we are doing now. Now, you have made a request, and since we only have two (2) speakers, am I correct, signed up? I will give you an opportunity to speak on two (2) items, but I want to make sure you understand I am making an exception to the rule, and I do not agree with your interpretation of OIP. You are not given any more opportunity than our rules state for all citizens. I will let you speak on two (2) items today.

Mr. Mickens: Okay.

Council Chair Furfaro: If you want to pursue this with OIP and reprimand me as Chair, I will respond to them accordingly. Please, go right ahead.

Mr. Mickens: Well, Jay, I am not trying to reprimand you. I know you are the Chair of this thing.

Council Chair Furfaro: No, but, Glenn...

Mr. Mickens: You need to set rules.

Council Chair Furfaro: I have not given you the floor again.

Mr. Mickens: Okay.

Council Chair Furfaro: You are making interpretations of the rule that are going out to the public and I am trying clarify that.

Mr. Mickens: Okay.

Council Chair Furfaro: If you want further clarification, go back to OIP, but I will give your copy to the County Attorney and hopefully they will reinforce what this rule, public speaking (D), is for the convenience of the public.

Mr. Mickens: Right.

Council Chair Furfaro: There is not challenge here if you stayed all day, I am not taking away your opportunity to speak. It is your choice to stay all day.

Mr. Mickens: Right.

Council Chair Furfaro: Now, I will take your testimony, Glenn.

Mr. Mickens: Okay. Thank you, Jay. First, on this Bill No. 2556. My opinion is critical that the Council reinstate the cap for taxpayers in the Homestead Class by passing Bill No. 2556. As Walter Lewis so wisely stated in his Garden Island article on 9/13, even though Bill No. 2556, it now changes the initial two percent (2%) cap to the increase in the Honolulu Urban Consumer Price Index. It provides an effective barrier to any substantial tax increase for our residential homeowners. Since Mr. Lewis has exceptional expertise in tax law and should be the source of information that our government badly needs. Let me quote some other words of wisdom from his article. "Our resident homeowners and their families should never have to face taxes or tax increase that are unexpected or

calamitous. Last year's repeal of the annual increase limit that had been enacted to protect resident homeowner's was, for many, a brutal assault on their justifiable belief that continuing homeownership would not entail massive increase in their property taxation. Nearly half of the Homestead Class had troublesome tax increase. The rationale for the repeal of the cap was that one if its effects was that owners of comparable value property were incurring different tax liabilities." I am sure that is what...Mr. Bynum has made case. This justification does not rise to the importance that would warrant a change and it had violated the cardinal rule. It is a normal pattern of the real estate market that values tend to rise over time and this so will property taxes, but with the cap, the earlier buyer will always pay less than the later buyer, and thus, it is equitable. In other words, this rationale for the repeal of the cap appears to be a red herring as a substitute for the real reason for a tax hike for the government to get more money to recklessly spend. Fairness for our homeowners compels the passage of Bill No. 2556. So, that is my testimony for that. Thank you, Jay. And now...

Council Chair Furfaro: Now, I am going to give you a second three (3) minutes, and please set the timer.

Mr. Mickens: Was I over three (3) minutes on that by chance?

Council Chair Furfaro: You have ended the testimony on that. I have accepted it. Now I am giving you your second three (3) minutes.

Mr. Mickens: Thank you. Since Charter Section 3.07(E) is part of every Executive Session that is held and we have eight (8) Executive Sessions today that they are on, I would like to enlighten those Councilmembers and members of the public who are not familiar with this Charter Section. If those Councilmembers who were on the Council at that time, I hope it reminds you that our system as it now operates is seriously flawed and needs changing, a change like a County Manager that has been proposed. Charter Section 3.07(E) was written before it was amended in 2008 stated that an Executive Session (ES) could be held for one (1) reason and one (1) reason only, for a claim as outlined in our Charter. For fourteen (14) months Ken Taylor and I testified before every Executive Session that was not for a claim protesting that the ES was illegal. Our protests were either ignored or we were told that there were other reasons for an ES other than a claim, but no Councilmember –JoAnn, you remember this. You mentioned that maybe there was Federal law or something. They never transpired. There was no other law that could cite any evidence to back up their contention. For informational purposes, the State ES was written before it was amended gave eight (8) reasons to go behind closed doors whereas ours gave just one (1) as stated. For those running our government and for all citizens concerned about openness in government, it is obvious that our previous Charter Section 3.07(E) was far more favorable to openness than the State ES Charter. Now, to add insult to our fourteen (14) month argument, our Charter Review Commission mysteriously put this issue on the ballot under public protest. We all stayed there at the meetings continually asking why you would want to change it. With some convoluted wording, the public passed the measure now giving our Council eight (8) reasons to hold these private meetings. Why do I feel it necessary to regurgitate this done issue at this time? Because it glaringly points out that this type of government's deceptive practice must be stopped and a manager type could probably by the answer. I know that you cannot give my any response to it, but I hope you read that carefully. Gary, you were not here. JoAnn, was here. Chock was not here. I think

Mel was here. Ross was not here. Jay, I think you were here at the time of this thing, but I remember Ron Kouchi was here, Kaneshiro was here, and a couple of others, I think, were here at the time. Hopefully, you remember our continually for fourteen (14) months, Ken and I sat here going over this, telling you we are illegally going into Executive Session, if it was as our Charter stated for one (1) reason and one (1) reason only. A claim. So, I hope you will take that into consideration. Thank you very much, Jay.

Council Chair Furfaro: Thank you for your comments, and I will close by saying, do not misinterpret my value of *kōkua* and *aloha* for your testimony in any way, shape, or form my modifications of our existing rules. Thank you for your testimony.

Mr. Mickens: Will our attorney, as you pointed out...

Council Chair Furfaro: I have already explained to you I will send your OIP piece to the attorneys.

Mr. Mickens: And he will send me back a reply?

Council Chair Furfaro: And you will get a copy from me once I have reviewed it.

Mr. Mickens: Okay. Thank you, Jay.

Council Chair Furfaro: Okay. This may close our period of public comment as we had two (2) people signed up.

There being no further public comment, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: On that note, I would like to ask the Clerk if it is possible, that we can go to the Resolution that Mr. Rapozo introduced. Mr. Rapozo, I will give you the floor on your Resolution, but I will take it back when we take testimony from people. So, you have the floor.

Councilmember Rapozo: Thank you, Mr. Chair. This whole issue....

Mr. Watanabe: Take the Consent item first.

Councilmember Rapozo: Go ahead.

Mr. Watanabe: Chair, we will take Consent Calendar item C 2014-249 first, then we will go to the Resolution.

There being no objections, C 2014-249 and Resolution No. 2014-44 were taken out of order.

Council Chair Furfaro: C 2014-249 references this Resolution?

Mr. Watanabe: Yes, Council Chair.

Council Chair Furfaro: I will leave it up to Mr. Rapozo if he chooses to have you read the whole Resolution or not. It will be Mr. Rapozo's choice.

Councilmember Rapozo: Thank you.

CONSENT CALENDAR:

C 2014-249 Communication (08/29/2014) from Councilmember Rapozo, transmitting for Council consideration, a Resolution urging that a cooperative effort be made by the State of Hawai'i, Hawai'i State Department of Education, and community residents in preventing a situation that allows school personnel to deny meals to students with a zero balance or deficit meal account.

Councilmember Rapozo moved to remove C 2014-249 from the Consent Calendar, seconded by Councilmember Kagawa, and carried by a vote of 6:0:1 (*Councilmember Bynum was excused*).

Council Chair Furfaro: Mr. Rapozo, you have the floor again. It has been so noted the C 2014-249 is removed from the Consent Calendar.

Councilmember Rapozo: Thank you, Mr. Chair, and I do not think it is necessary to read the Resolution because it is pretty long and it covers a lot of things. I think the general...

Council Chair Furfaro: Again, I wanted to give you the choice to have it read or not.

Councilmember Rapozo: Thank you. I appreciate that, Mr. Chair. This is an issue that is ongoing. It is not unique to Kaua'i. It is Statewide. In fact, many municipalities throughout the Country, other municipalities, other States handle it a little different, but the bottom line is the system at schools are set up where kids have an account for their lunch and the parents fund the account, the kid is given a card like a credit card, they swipe it, and it determines whether or not the kid has available funds in the account to eat lunch. What has been happening is, for various reasons, as I am hearing from more and more parents every day, these accounts get to a negative balance for whatever reason. Negligence of the parents, the schools send home the notes with the kids and it is not getting to the parent, the parent simply does not have the money, and they do not qualify for the free lunch. Whatever the case is. In my opinion, it is irrelevant. The bottom line is kids are being denied food at school.

I understand that everything has a cost and I understand that somebody has to pay for that food, but I got some disturbing –and this all started back in May, I guess, when I saw a Facebook post from a person that I know. It is not a made up anonymous person. It is a person that I know from the West Side, whose child had gone through the line, picked up the tray, go to the cashier, swiped the card, realized that the card did not have a valid or adequate amount of money, and they took the tray and tossed it in the trash can. Now this is disputed by the State and the school, but I am giving the kid the benefit of the doubt. I do not believe the kid would lie, and since then, I have heard from other parents whose other children who have told them that they are tossing the lunch in the trash. So, I am going to accept that as truth regardless of what you hear today. So, that frustrated me. I simply, on Facebook, replied with a comment that said, "Someone please tell me this is not true." From that post, we got numerous posts from parents, I got numerous E-mails and phone calls, and we have initiated some communications with the State Department of Education (DOE) as to what in the heck is going on. It was

determined that the school's policy is, obviously, they have a Negative Balance Policy, which I am sure Mr. Arakaki will talk about today. I am not talking about the justification for the policy. I am not talking about how much it is costing. I mean, really, the last number I got from the Honolulu State Office was that Kaua'i's total schools, all of the schools combined, negative balance was about five thousand six hundred dollars (\$5,600). Five thousand six hundred dollars (\$5,600). At a time when we read newspaper articles about spending forty five thousand dollars (\$45,000) to paint Abercrombie's picture for the Capital and we are looking at this Council. Government spends money on things that are not necessary, but when we look at this and say, "Hey, Kaua'i's balance is five thousand six hundred dollars (\$5,600)" like is it some amount that is going to break the State. As a result of that, we are going to deny kids their lunches. I am not even going to have to bring up the health issue, the issue that kids do not perform on empty stomachs, the fact that some of these kids that is their only meal. Some of these kids go to school, they do not have a lot of what others have and they wait for that lunch. I do not have to bring that up because I think you all know that.

This Resolution is simply an attempt to get the State's attention and say, "Hey let us work out a way where these kids will not be denied lunch." I hear we are trying to work with the Parent Teacher Student Association (PTSA). It is not a PTSA issue. It is a State issue. If a kid goes to school and he does not have a uniform shirt, the school gives him a shirt, and they tack on an obligation at the end of the year because that shirt is very important. We cannot have a kid in our school without a uniform shirt, but it is okay if they do not eat. That is not acceptable. Let me make this clear. This is not a jab. Yes, I read the comments in The Garden Island. It is amazing how people think. Some of the comments I have read. Oh, people should think about this before having babies. Oh, they should use condoms more often. They should not have babies they cannot afford. I cannot imagine people. That is what this island has come to. We have kids that are going up in the line, getting their plate, sitting down, being tapped on the shoulder, and said, "Give me your plate. You do not have enough money." What are we doing? This is not a point at Mr. Arakaki. This is not a point at the persons that are doing that. I mean, I would never do it. I would not. I would take a suspension from the school before I take a kid's lunch away, but that is their policy and they stand to discipline if they are not following the policy. This is a DOE policy. This is a policy that I am hoping that will change. In the mainland, if a kid runs into a negative balance, they have a separate meal. They have a cheese sandwich and a milk that meets the minimum standards. So, even if that kid has a negative balance, they give him something to eat, and they tag on that cost, which is one dollar twenty-five cent (\$1.25) less than the regular hot lunch, to the kid's account. I mean, how we can...if we come to that point and Mr. Chair, if you allow me to just do a quick PowerPoint. I will tell you what I am hearing, and I am hearing from a lot of officials in the Department of Education and in the schools. Again, this is just a policy. It is a bad policy that needs to be change. How do I turn this thing on? The side button? This one? Okay, it is coming on. I am sorry.

So, a couple of days ago, I posted on Facebook I wanted to hear some real stories from real people. I did not have to hear anonymous nonsense in the newspaper that people hide behind anonymous tags. I wanted to hear from real people that I could identify with that I could communicate with. I want to hear your stories because I am hearing from school people, I am hearing from people who call me up upset. People that work at the school say, "Mel, that is not happening in our school. I do not know where you are hearing that." So, this is just some. I have more that came in last night that I was not able to update the...obviously I am not

using any names, but if the Department of Education wants names, I can give those names. They want to remain anonymous, obviously, because they do not want the kid to be targeted in school. You folks remember schools, how mean kids can be.

My child was denied lunch at middle school recently. He had already picked up his lunch and when he went to scan his card they told him he did not have enough. His account was short fifteen cents (\$0.15). They proceeded by taking away the lunch he already grabbed.

I encountered this situation when my son was in kindergarten at Elise H. Wilcox School. Elise H. Wilcox now, is an elementary school. I received a call midmorning from an Office Clerk informing me of the fact that my son would not be given a lunch today. His lunch account had been depleted and had run negative. A notice had been sent home, but he being five (5) years old, never got it to me. I asked if perhaps they could debit his account forty (40) more cents and I could replenish his account in the morning. She said that was not possible, and even if I paid it now he still could not eat, and I would need to bring him a meal from home. I was so mad and frustrated with the people I trust to care for my kids. I wanted to raise hell and tell them how petty they are. Instead, I drove to the school and signed out my boy for the day. This is Kaua'i people. While that kid was denied his lunch some inmate at the jail got fed well.

My youngest son was at Waimea Canyon Middle School when our incident happened. One day he came home and was so upset with me. I asked him, "What did I do" and he said, "He had no lunch because he did not have money." But how it went down is what has had my blood boiling ever since: 1) He was allowed in line, 2) he was allowed to pick up a tray with food, and this is exactly. I did not edit any of these so I apologize for any typos. After he sat with friends, the cafeteria chaperone (I do not know what they are called) approached his table and took away his tray. They said, "Taylor, you do not have money in your account to pay for this so you cannot have it." She took it to the trash and dumped it. Waimea Canyon Elementary School.

This happened to both my sons a couple times both at King Kaumuali'i Elementary School and Kapa'a Middle School. On these occasions we were never notified of the account needing money deposited. The schools are usually good with notification and we send a check the very next day, as I am sure other parents do. I was furious with the schools and let them know about it, but I got the same answer every time, which was, "Well, there was no money in his account so no lunch could be served." I think it is a bunch of BS and I am glad you are stepping up and doing something about it. No kid should go hungry.

This happened to both my daughters at Chiefess Kamakahelei Middle School. We live in Kalāheo so they go to school early and come home late. So, not eating lunch is a big deal. For what the girls told me is that they went through the lunch line and when it was time to pay they did not have money on their account so they had to put the lunch back. I do not know if they can serve it again since they touched the lunch, so I am thinking that the school just has to throw it away. This while my kid does not get to eat. They do not get to call their parents about the incident. I was told by the Vice Principal that even if they let the kids call their parents, it would take too long for the parent to drive to the school to give them the money for lunch because they have a short lunch period.

My children were two (2) of those children denied lunch, and this is a separate one now, because their account was negative. I know you do not need specific schools to blame, but this happened in Kalāheo Elementary School and Chiefess Kamakahalei Middle School. My last two (2) kids are a Junior and Senior this year. So, it was a few years ago. So, this is something that has been going on. On the school's defense, they did call to let me know I am close to negative but unfortunately my circumstances at the time was not one where I could give one hundred dollars (\$100) or so at the time. I just did not think they would have denied it, meaning they would have denied the lunch. Funny thing is that they would give my kids a shirt if they were out of uniform and would tack on an obligation at the end of the year for books et cetera, but not food. Oh, my goodness.

Our Special needs...this one hit my heart. Our special needs daughter went through a day this past year and had her lunch taken away from her because her balance was not sufficient that day. She came home crying and we were very, very upset about it. We made the school aware of the problems and could not believe this Negative Balance for Schools Meals Policy existed here in our islands. Special needs. It should not matter whether you are special needs or not.

Yesterday, this was just yesterday so this would have been two (2) days ago. My daughter never ate lunch for no money in her account. I did not find out she did not have money until she told me. However, I called the school and they told me I should have gotten an automated call, which I missed and a message was left on voicemail. This cannot be happening. She came home and was hungry. The office said, "If she does not have money she cannot eat" and she told me that she had to put the lunch back. This did happen to my son at Chiefess Kamakahalei Middle School last year. Without me knowing my son's lunch account ran negative and when he tried to get lunch the lunch attendant denied him. He came home from school upset and hungry.

That is just a few. Like I said, there is more than I did not have time to update the policy. Now, I bring that up because I think it is important to understand number one, that this is happening. Regardless of what that lady told me from Honolulu, and I hope she is here today. She sent me a letter basically calling me a liar saying these things do not happen. How in the world would you know? You are in Honolulu. Do not tell me that it does not happen because these are real people. Real people with real children that are being intimidated and are being kept from eating lunch, and for the life of me, cannot understand how and why.

This Resolution is targeted to the State so they can wake up and change that policy. You do not pay your property tax, we still pickup your trash. You still get the services of government if you do not pay your taxes. A kid, who at no fault of the kid, for whatever reason even if again, even if the parents are negligent or irresponsible, and I read comments that the parents, yes. The parents should pay, and they will pay. If we set a system where these accounts at the end of the year are charged to the parent, and if the parent does not pay, then there are ramifications, collections agencies, and all of those things that they would normally do with an overdue book. That is why the Resolution is here today, but I want to make it clear that this is still happening as recent as the day before yesterday. I did not know how else to do it. I have been in communications with the State and I will tell you that I am not satisfied with the response I got from the Director of the School Food whatever they call her. Mr. Arakaki has been more than helpful, more than receptive and he has tried his best, but that is not enough. We need to get the

attention of the State in Honolulu to get the Board of Education or whoever is in charge of this policy to change it and to add a little clause in there that says, "No kid will be denied lunch." I cannot believe that cannot be done with Sunshine Law six (6) days' notice. They have to do a public hearing to change an administrative rule, whatever their rules are. I hope this gets Statewide publicity. To the people that think this is political pandering, up yours. I found out in May. I did not pick the date. I did not start it on Facebook. Somebody came to me, and I am proud that we can sit here as a Council and again, deal with the State's shortcomings. Deal with it at this body. We are limited to what we can do. The Resolution is a policy statement. I just hope that they will pay attention and listen to the pleas. There are some parents here and they asked me if they should talk. I said, "You do what you want. You feel compelled to come up and say a few words, you do." But I think it is clear, based on what you just saw, that this is happening and it is happening way too often, and it needs to stop. No kid should be denied a lunch. Thank you.

Council Chair Furfaro: Okay. Well, it is obvious that first of all, I want to make certain that we understand that it a sense of awareness that, I think, Mr. Rapozo introduced the Resolution on, and as a policy statement. On that note, I need to really make clear that the Council has this on the agenda at the request of Mr. Rapozo so that this Resolution can be directed at people that can be made vividly aware of the challenges they have. That is why it is on the agenda. At that point, I would like to now take testimony from anyone. Excuse me, Mr. Kagawa, I will give you the floor. Go ahead. I will give you the floor.

Councilmember Kagawa: Just a process question. Do we need to, I guess, not read the entire Resolution, but the agenda item so the public knows what item we are speaking under, and we can have a motion?

Mr. Watanabe: We are on page 4 under Resolution.

RESOLUTION:

Resolution No. 2014-44 – RESOLUTION URGING COOPERATION BY THE STATE OF HAWAII, THE HAWAII STATE DEPARTMENT OF EDUCATION, AND COMMUNITY RESIDENTS IN PREVENTING THE DENIAL OF SCHOOL MEALS TO STUDENTS: Councilmember Rapozo moved for adoption of Resolution No. 2014-44 on second and final reading, seconded by Councilmember Kagawa.

Council Chair Furfaro: That item as just read by the Clerk appears on page 4. At the request of the introducer, we are not reading the Resolution, but we can make copies available for those of you that wish to have copies. We are not open for public comment.

Councilmember Rapozo: Mr. Chair, if I may.

Council Chair Furfaro: Yes.

Councilmember Rapozo: What I do want without reading the whole Resolution, what I do want to emphasize is that every Resolution has the body which says the "whereas" and it really talks about the policy. I would like to read the "Be It Resolved" just so that this is what we want to see should this pass.

Council Chair Furfaro: I tried to summarize that in what I stated earlier because we do not have any real authority, but you go right ahead and read the "whereas."

Councilmember Rapozo: Thank you, Mr. Chair.

"BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, that it urges cooperation by the State of Hawai'i, the State Department of Education, and all parents and guardians in preventing the denial of a school meal to any child.

BE IT FURTHER RESOLVED, that it requests the Department of Education to research possible solutions that would eliminate the situation of school personnel having to deny a school meal to any student.

BE IT FURTHER RESOLVED, that copies of this Resolution be sent to Governor Neil Abercrombie, Kauai's State Legislative Delegation, the Hawai'i State Board of Education, School Food Services Branch Director Glenna Owens," that is her name, "Kauai Complex Area Superintendent William N. Arakaki, and Mayor Bernard P. Carvalho, Jr." This is a very loud attempt to get the decision makers on the table to find a solution where this should never happen. Thank you, Mr. Chair.

Council Chair Furfaro: Okay, we are now at a point that I can take public testimony. Do we have anyone signed up for this?

Mr. Watanabe: Yes, we have.

Council Chair Furfaro: Would you start calling the names after you tell me how many people have signed up?

Mr. Watanabe: We have two (2) people signed up.

Council Chair Furfaro: Okay.

Mr. Watanabe: One is Stacey Gillette and William Arakaki.

Council Chair Furfaro: Stacey, would you like to come forward?

There being no objections, the rules were suspended to take public testimony.

WILLIAM N. ARAKAKI, Kauai Complex Area Superintendent: Aloha, good morning.

Council Chair Furfaro: Good morning.

Mr. Arakaki: My name is Bill Arakaki, Council Chair, Superintendent. I am here just to give you some background, and thank you so much Councilmember Rapozo. I appreciate your passion regarding feeding our children. Councilmembers, please know that our principals, our teachers, our staff in the schools truly care and really want our students to be fed. As Mr. Rapozo mentioned, all schools follow the Zero Negative Balance Policy, in which when students are either at zero (0) or there is a threshold of negative ten dollars (-\$10) or negative fifteen dollars (-\$15), that is when notification is made out. There are policies, rules, and regulations that schools need to follow. So, what I did was, and

you must have it. I have copies of the current fact sheet for our School Food Services Program. This is what we follow. I kind of highlighted the tab where that is the part as far as the Zero Negative Balance area. That is for your reference. So, all schools follow that, and I have parents here. I understand there are incidents where students are denied lunches, and it is because of the policy. The principals work really hard with their staffs to be professional, to be diligent, and that is what we want to do because we are part of the families too here. We know each child. We do not want to embarrass them. We do not want to be dignified with that. So, we promote that. Just to let you know. I met with my principals yesterday, I met with the School Administrative Services Assistants (SASA), which is the school secretaries, to review all of our procedures that we are doing that is part of the guidelines for the State as far as notification, what are schools doing? What mechanisms are they providing as far as notification? How effective are they? So, for the parents that are here, their concerns are heard and I am, and the principals are looking at how we can better that so that we do not have incidents.

Now, it is the policy that we are following that we have the students not being able to eat. I agree. How do we do that together as a community? Now, I represent the State. Glenna Owens is the School Food Service Director. So, we are looking at that. The Resolution, I provided that to them, and there is a State leadership meeting going on today, and I asked Deputy Nozoe that I need to miss the meeting. I will probably try and get there before lunch because I need to let the Council know that I am here to represent them also and bring this Resolution so that we can look at it. They really, really...all principals, all Complex Area Superintendents (CAS) truly believe that how do we provide this for all students. Not saying that the federal laws or requirements drives a lot of things, which they do, we need to really make sure that we are able to comply to the reimbursement of meals and they require us to clear the deficits by the end of the year. So, how do we do that so that no one is left behind as far as being fed? So, yes, we need to look at options. Yes, we do have policies that have been in the DOE for a long time. Mr. Rapozo, my eyes are always open and my ears are always open. I will be there and I will go back this afternoon to report that. I did report on this matter and work with the Food Service Office to kind of see what we can do because this is a State issue. This is a State regulation that we have.

Mr. Watanabe:

Three (3) minutes.

Mr. Arakaki: Just to let you know also that we have had meetings with Senator Kouchi, Representative Tokioka, Representative Kawakami, and so on because at the State Legislative this was brought up to them. So, we are looking at how we can address this matter. What I am happy to say is, I think for Kaua'i we do have community members that are willing to help support us. Now, with that, when we do provide support, we need to always look at the other side because we need to meet the Federal guidelines. How do we ensure that the parents are responsible to be able to pay back the obligation that Mr. Rapozo talked about because if a student stays in the system from Kindergarten to twelfth grade, but the time they graduate, if it is an obligation, they would have to pay it to be able to participate in walking. The diploma, if they earn it through credits, we have to give them the diploma. So, how do we those kinds of mechanisms to be able to buy that time, I call it, so that people can eat? But we need to really have the parents be responsible. If they cannot afford it, we do have the Free and Reduced Lunch Program that is available for them.

So, what I did for you also is this is an application for the Free and Reduced Lunch Program. A lot of parents, I know they are struggling financially. It just depends when they get their paycheck and what bills they need to pay, but that kind of gives you the income range of how they would qualify for our Free and Reduced Lunch. Free means totally no cost, reduced is at a lower price, and it is all there on that application form. I understand some parents may not want to do that, but I would encourage them that they look at the Free and Reduced Lunch Program. That may solve some of the problems as far as students not being to pay and being able to eat. So, I just wanted to let you folks know what we are doing as far as Kaua'i, the information will go back to the State level, and we are working very hard to ensure how we can address this matter.

Council Chair Furfaro: Bill, let me ask a couple questions if I could. Again, as Mr. Rapozo pointed out, what we are looking at today is a policy statement. It is a policy statement that, I think, goes along the lines to not only about nutrition, but the possible perception of children feeling perhaps segmented out of the group for items that might be beyond their control. As I look at this particular piece on page 3 in the policy, it says, "Schools must reimburse the School Food Service for all negative account balances by the end of each school year."

Mr. Arakaki: Yes.

Council Chair Furfaro: Not at the end of each day.

Mr. Arakaki: Yes.

Council Chair Furfaro: It says, "at the end of each school year." So, is that simply because the State does not allow there to be any even small receivable where parents can work out because if that is the case, that is the policy that needs to change. I mean, every government entity, they are accountable for a receivable. We have bad debts in the County. We have deferred payments with penalties on taxes and so forth, but this says, "by the end of each school year," and I think that is possibly an item you folks can look at in your policy statement.

Mr. Arakaki: I circled that item so that I can find out as far as each month or each day when there is a negative below what we can do.

Council Chair Furfaro: I think this would certainly address the trials that some people are having in being able to keep their accounts current. It clearly says, "at the end of each school year." Perhaps, you folks can focus in on opportunities there too again, with some compassion and *kōkua*. So, please look at that. Mr. Kagawa.

Councilmember Kagawa: Thank you, Bill. Thank you, Chair. Thank you, Bill, for your presentation and your handouts. The cost of a school lunch is about five dollars and five cents (\$5.05) in 2012 and 2013. How much does our children pay? I mean, I am kind of embarrassed I am a teacher and I do not know. If they do not have free and reduced lunch, how much do they pay?

Mr. Arakaki: I have it right here. For school lunches, it is two dollars and twenty-five cents (\$2.25) for a regular meal.

Councilmember Kagawa: Two dollars and twenty-five cents (\$2.25).

Mr. Arakaki: For Kindergarten to Grade 8, and then two dollars and fifty cents (\$2.50) for high school.

Councilmember Kagawa: Okay.

Mr. Arakaki: Reduced price for breakfast is thirty cents (\$0.30) and reduced price for lunch is forty cents (\$0.40).

Councilmember Kagawa: Thank you.

Mr. Arakaki: And for breakfast, regular meals Kindergarten to Grade 8 is one dollar (\$1) and then one dollar and ten cents (\$1.10) for those in ninth grade and twelfth grade for breakfast.

Councilmember Kagawa: Thank you. I think, I mean, as I read this Section C, Denying Children with Negative Balances. Thank you for putting the pink stickem. I think the gray part is where you say, "The United States Department of Agriculture (USDA) encourages schools to be flexible, particularly with preprimary younger primary students and children with disabilities who may not be able to take full responsibility for their money. Schools are encouraged to provide credit for these children who forget or lose their money." So, I guess, that just leaves the decision primarily, I guess, to the...who makes that decision? The Head of the cafeteria at the school?

Mr. Arakaki: So, just to let you know with that clause in there, all of our nine (9) elementary schools will feed an elementary child no matter what the balance is. How elementary schools provide to pay for the balances at the end of the year is through PTSA funding, schools will try and find petty cash moneys, and also other areas. For the secondary, they do not have that. We may need to look into that because we want to build the personality for the parents to be able to do it because they have gone through the whole system from Kindergarten to Grade 6, and now it is time to kind of pay your deficit. So, those notifications go out.

Councilmember Kagawa: I understand, I guess, the quandary we are in because if you allow the parents or the students to eat without paying, it is going to become, I guess, common practice. So, I know where the balancing act, but I also understand the need for the Resolution. I guess, how do you feel about the Resolution passing and just encouraging the DOE and everybody to really look at this and perhaps see if we need to take away the gray in this Section and include the high schools as well?

Mr. Arakaki: For me, I am always for Kaua'i and whatever way we can support our students. Now, I am part of a State system so we do have State policies and regulations like this that we need to follow. So, within our own system, how do we address it so that it meets certain criteria? I think within our own State what we do within our schools can be addressed due to these concerns that are being arisen from Kaua'i specifically. I am sure this must be happy elsewhere. I really do not know, but it just draws attention to the matter that we need to address it.

Councilmember Kagawa: I guess, my last question, Bill, has there ever been a proposal to perhaps put in a number, like if it goes over one hundred dollars

(\$100) your balance owed for any student in the high school or elementary, then you may be denied meals?

Mr. Arakaki: Yes.

Councilmember Kagawa: I mean, instead of just leaving it for even if you owe forty cents (\$0.40) you cannot eat.

Mr. Arakaki: So, right now, when a student's account reaches five dollars (\$5), they are being notified that you have a low account because two dollars and fifty cents (\$2.50) for high school and two dollars and twenty-five cents (\$2.25) for other students. Then, once it goes into negative, a student can go into a negative ten dollars (-\$10) balance and once it passes the ten dollars (\$10) balance to be able to buy a lunch, that is when the students are saying, "I am sorry, you need to put your lunch away." One (1) school is at fifteen dollars (\$15).

Councilmember Kagawa: Okay.

Mr. Arakaki: So, as far as maybe for the month it is one hundred dollars (\$100), those are the thresholds. Five dollars (\$5) low account, they will notify, ten dollars negative (-\$10) to fifteen dollars negative (-\$15), that is when that whole process goes.

Councilmember Kagawa: Thank you, Bill. Thank you, Chair.

Council Chair Furfaro: Mr. Chock, I will give you the floor, then Mr. Rapozo, and then JoAnn. I am going to step out after you speak, and if you could take over the meeting, I would appreciate it.

Councilmember Chock: Okay.

Council Chair Furfaro: Go ahead, you have the floor.

Councilmember Chock: Thank you, Chair. I want to thank Mr. Arakaki for being here and Councilmember Rapozo for this Resolution. I know when the issue came up there has been a lot of people taking a look at what we can do. So, I appreciate also, the fact that you have all gathered the principals around this issue. I really want to look at what the solutions are, and I think that this is the first step, is to request. To bring it into perspective, my questions are around sort of getting a grasp what it is we serve. So, can you tell me how many lunches we serve on a daily basis?

Mr. Arakaki: I got an E-mail. We serve almost one hundred thousand (100,000) lunches in a year.

Councilmember Chock: Okay.

Mr. Arakaki: We have about nine thousand four hundred (9,400) students within our DOE schools. Fifty percent (50%) of our students are on free and reduced lunch. So, that is about half of the nine thousand (9,000) that are receiving that.

Councilmember Chock: Okay.

Mr. Arakaki: It varies from school to school, like Kekaha is at some seventy four percent (74%). So, schools are various as to who is on free and reduced lunch.

Councilmember Chock: I understand. So, it sounds like from the conversation, that it is just middle school and high school that would be affected by the concerns that we are talking about now. Is that correct?

Mr. Arakaki: Correct.

Councilmember Chock: Okay.

Mr. Arakaki: Principals had made adjustments for the elementary schools and how do we support that with the secondary?

Councilmember Chock: So, elementary school is not an issue. We just have to focus in this area of middle school, and maybe that is probably the problem here, is middle school mostly. Do we know how many incidents we are aware of? I like Councilmember Rapozo's thing. Even if it is one (1), we need to make sure that we can get that taken care of, but just to get a grasp of it, how many area we dealing with? I know Councilmember Rapozo, you had at least a handful.

Councilmember Rapozo: We had ten (10) up there.

Councilmember Chock: Ten (10) up there. Do you have any figures as to what we are dealing with?

Mr. Arakaki: As far as coming to my office as far as I call it a "complaint," I have a few parents who that have notified me, and we are working with the schools to kind of see how we can address it because some cases are different. It may not be related to a negative balance. What I can do is find out from the schools because when they are at the negative balance or zero (0) balance, we can see the accounts. I cannot give student names, but we can see where we are at as far as the month.

Councilmember Chock: Okay. So, we can get a handle on that negative balances. The figure I heard was that there was an outstanding balance of about five thousand dollars (\$5,000), is that correct?

Mr. Arakaki: Five thousand six hundred dollars (\$5,600) was last year as far as the year.

Councilmember Chock: Okay.

Mr. Arakaki: What happens is each month parents do pay, some do not pay, so it varies and they total it. Like this month, there is a negative balance of eight hundred forty some odd dollars at various schools.

Councilmember Chock: I see.

Mr. Arakaki: So, it varies.

Councilmember Chock: So, at the end of the year though, the schools are needing to satisfy an amount of up to five thousand dollars (\$5,000) potentially annually to make up any deficiencies? That is in average. Is that correct?

Mr. Arakaki: Yes.

Councilmember Chock: Okay, alright. Thank you. I appreciate again, your time. You are missing your leadership meeting.

Mr. Arakaki: So, the total is eight hundred fifty-nine dollars (\$859) for August.

Councilmember Chock: For August.

Mr. Arakaki: For August, eight hundred fifty-nine dollars and thirty-five cents (\$859.35). The schools that have deficits, there is one, two, three, four, five, six, seven, eight, nine (9) schools of the fifteen (15) schools that we have. So, there are certain students that are having difficulty and families.

Councilmember Chock: I see.

Council Chair Furfaro: Mr. Chock, I would like to let you Chair the meeting while I step out. Just a reminder, we have a very full calendar today so if we could have all of us speak and if there is no more public testimony, then I think we should vote on the Resolution, but we do have a very full agenda.

Councilmember Chock: Thank you so much.

(Council Chair Furfaro was noted as not present.)

Council Chair Furfaro, the presiding officer, relinquished Chairmanship to Mr. Chock.

Mr. Arakaki: Can I close, Mason? Just to let everyone know that our principals and all of our staff again, are really working hard to address this matter. Specifically for Kaua'i, concerns that come from specifically for schools as far as communication and what is going on, let the principal know, let myself know, and we will handle it because I think we can deal with it within our schools here. As far as the State, I will bring it up to the State level and support that because we are in contact not only with the Food Service program with our State Legislature as far as Kouchi and the Representatives, all of them.

Councilmember Chock: Thank you. I know that Councilmember Rapozo wants the floor and others. So, if you can stay, I think there may be more questions.

Mr. Arakaki: Oh, yes.

Councilmember Chock: Councilmember Rapozo.

Councilmember Rapozo: Thank you. Just a couple of question for Bill, and Bill, thank you for being here again. I meant what I said. You have been a big help for me, but when I get a response from, I guess, I do not know if that is your boss of what, Glenna Owens, and I hope you see her today. I am going to ask staff

to give you a copy of the PowerPoint in paper form so you can go up there and show her how inaccurate she is. In her letter she tells me, "In response to your letter dated May 2nd, the situation discarding a full plate of food due to insufficient funds is not true." Well, I think we know it is true, and maybe she does not know it is true, but to tell me that it is not true is basically saying, "Mel you are lying to me" and I am not going to tolerate that. So, you can personally deliver that to her and tell her, "Get real." I mean, really, understand what is happening and do not hide behind the desk. Really. As you can see, I am really frustrated with that because to me, it is like she gets to defensive. Rather than say, "Mr. Rapozo, I got your letter and let us work together," no. She basically blames the parents. We have outstanding money. They owe us money. I understand that. How do we know, how does the State know that a student's parents or guardians have been notified? Do we have confirmation because as you can see in most of them, they did not know?

Mr. Arakaki: I surveyed the SASAs, which are the secretaries that are involved with doing all of this. So, there is many mechanisms as far as notification. They send out pamphlets, they have handouts...

Councilmember Rapozo: With the child?

Mr. Arakaki: Yes.

Councilmember Rapozo: Yes, okay.

Mr. Arakaki: The issue is again, because cost for postage, it is given to the child, it is put in their backpack, how effective is that is the question.

Councilmember Rapozo: I mean, can we add a line, parent signature, and have the kid return it the next day?

Mr. Arakaki: That would be a suggestion, and webpage. Some schools do the Connect-CTY, which is the automated telephone way. Some schools, the principals will call personally or an administrator when it comes down to the real low, low negative balance and so on. So, it varies. The minimum is a letter that goes home and a phone contact. So, others as far as first day of school sending the letters out, it varies. So, we need to be consistent on that.

Councilmember Rapozo: I just think that we need to get some sort of confirmation like when we send them out for a field trip or whatever, they always required a parent to sign and the kid brings it back. As we saw, I think one (1) of the comments they did defend the school and said, "They did call me. I just did not have the money." So, yes, okay, but most of them, forty cents (\$0.40), fifteen cents (\$0.15), they never knew. When they are trying to leave their work to come to the school to pay it, they say, "No, it is too late." That is what I am looking at. Those things can be fixed, and I am not sure because nowhere in the policy does it say we are going to deny the kid food. All it says is the negative balance has to be paid by the end of the year. Eight hundred dollars (\$800), I mean that is not much for a month. I mean, it is, but how many lunches you said we serve? One hundred (100)?

Mr. Arakaki: Through the year last year was about one hundred thousand (100,000).

Councilmember Rapozo: One hundred thousand (100,000) lunches, and I wonder how many we denied. I do not think we know. I mean, we do not know how many lunches. I do not think they keep track of who gets denied or...

Mr. Arakaki: I can find out from them too.

Councilmember Rapozo: Yes. The other thing is, I know the concern is how do we get this thing paid, what do we do with the kid, and what if they do not pay, but a lot of these kids do extracurricular activities, a lot of these kids play sports, and a lot of these kids perform whatever. I think the more practical painless solution for the kid is take away their right to participate in any extracurricular activities. I mean, at least they will eat. If you tell a football player or baseball player or a band member, "Hey, you have a thirty dollars (\$30), pay your balance or you are not going to be able to perform. You are not going to be able to play."

(Councilmember Kagawa was noted as not present.)

Councilmember Rapozo: To me, I can handle that. That I can handle because that is a privilege to play sports, play in the band, and travel or whatever, but the eating to me, is a right. We do not punish the kid because the parents are fools or in some cases, it is legitimate. They do not have the money. So, that is what this Resolution is about, Mr. Arakaki, and please take that back to that lady.

Mr. Arakaki: Sure.

Councilmember Rapozo: I really was hoping she would be here today because I think when she reads the slides, she will understand that maybe she needs to come down here and maybe talk to some of the parents.

Mr. Arakaki: And please know that Ms. Owens is also concerned about the whole matter, and I do not think she meant to have you...

Councilmember Rapozo: To piss me off?

Mr. Arakaki: Yes.

Councilmember Rapozo: Well, she did. She did. Your letter is a very gracious letter, and hers is, "Mel, you are lying."

(Councilmember Kagawa was noted as not present.)

Councilmember Rapozo: Anyway, I am not going to get into that.

Mr. Arakaki: I will let her know, and I must support her too because she is part of my leadership team. So, I will let her know the concern that you have.

Councilmember Rapozo: Okay. Tell her she can watch this in the archives and see exactly how I feel because it is not cool what they are doing. Thank you.

Mr. Arakaki: Thank you.

Councilmember Chock: Councilmember Yukimura, you have a question?

Councilmember Yukimura: Thank you. Thank you, Mr. Arakaki, for being here. Thank you, Mel, for introducing the Resolution. Through the questioning, we have established that these are middle school and high schoolers, and it is not about those qualifying for those for free lunches, though if there are those in the group that is having trouble paying, they may qualify.

(Council Chair Furfaro was noted as present.)

Councilmember Yukimura: So, that is an option they should look at?

Mr. Arakaki: Yes.

Councilmember Yukimura: Okay. Now, you said that nine (9) out of fifteen (15) schools have deficits?

Mr. Arakaki: Yes.

Councilmember Yukimura: So, that means that six (6) schools are without deficit?

Mr. Arakaki: That means parents have cleared it for that month of August. There is a report that goes into the State as far as any negative balance. Those six (6) schools reported zero (0), meaning people have kept up with their accounts.

Councilmember Yukimura: And those include high school, middle school, and elementary schools?

Mr. Arakaki: Yes.

Councilmember Yukimura: Okay, but it is just for the month?

Mr. Arakaki: Of August, yes.

Councilmember Yukimura: So, it does seem to me that the problem, I think, I mean, it is horrifying to me actually to think that there might be a child who gets a lunch and then it is taken away and then thrown away.

Mr. Arakaki: Well, as far as food thrown away in front of students, again, I do not want to dispute what Mel is saying and who is right or who or who is wrong. There is a safety issue and regulation regarding any food that is taken off the line, if it is touched already and you go out, we cannot put it back in the line. Now, one of the issues that we had is, so why do we not swipe the card in the beginning because right now, they need to pick up their lunch, go out to the cashier, and you swipe it at the end. There is a regulation that is how we do it. So, we are trying to see how we could prevent and avoid that because when they go through, the cashier also tells the child you are at this, not only through letter or through telephone, as they go through, they will let them know. You have this much in your account because they can see it. So, yes, the food is disposed of, but not in front of the child. The Cafeteria Manager puts it back in the counter where

they are preparing food and because it has already being exposed to possible items, then we cannot...

Councilmember Yukimura: I guess I am thinking if it has to happen, I mean, a lot of this seems to be about how this is happening, but if it has to happen at minimum, do not even let them go into the line. I mean, to get the food and then to...

Mr. Arakaki: Right, and...

Councilmember Yukimura: And to throw away food too, just boggles my mind. Give it to the child.

Mr. Arakaki: The intent or the procedures to notify are outlined and schools follow that, depending on how consistent they are and how do we support that. The food safety is a big issue because people can understand that.

Councilmember Yukimura: Of course. What I am saying is, is there not a way we can just not even get there?

Mr. Arakaki: Right.

Councilmember Yukimura: I would ask that the DOE can surely figure that out somehow.

Mr. Arakaki: Like I mentioned prior to, can we do the swiping? So, yes, we are looking into how they go through the lines is the question before they pick up a lunch.

Councilmember Yukimura: Yes, I mean, it comes across as a really broken system and it does not reflect any of the values we want our school system to reflect. So, I am glad that it is coming to a Statewide level because it is a Statewide policy. I mean, if it is happening here on Kaua'i, it must be happening throughout the State and that just seems really unacceptable and inexcusable. So, if the process could be at least addressed. I mean, I think to also reflect the need to have responsibility, take *kuleana* whether it is parent or child or school, take responsibility for what we are responsible for. I can see the importance of doing that. I do not think we should allow people to not pay where they can pay, and where others like them are paying. I think some grace in credit and then paying for it later or annual. I even like the suggestion that children might be restricted from certain other things, but not from the food itself is an appropriate remedy.

Mr. Arakaki: And currently, the negative balance clause is what we are following, so we will take a good look at it with these issues that are coming up, and it is at the forefront at this time.

Councilmember Yukimura: Right. So, what you are saying is in order for a change in the procedure to happen and what actually happens on the ground, you have to have this change in policy, is what you are saying?

Mr. Arakaki: Well, yes, because this is what we follow at this time. So, we need to look at it as a State system.

Councilmember Yukimura: Okay, well, it seems appropriate that the Council express its desire that the policy change because if that then gives you and the principals the freedom to figure out a better process, that would seem good.

Mr. Arakaki: And I am sure in concert with the Federal regulations and guidelines, how do we meet those requirements with the demands as far as...we all know the research as far as nutrition and food...

Councilmember Yukimura: Right.

Mr. Arakaki: ...exercise for students, and how do we balance all of that.

Councilmember Yukimura: Well, it would seem that having some funding on the part of the State to have this kind of fund that has plus and minus and can pay off the Federal but keep or give this extra grace by the end of the year or the end of the second month or the third month or quarter, or whatever it is would be the way to go.

Councilmember Chock: So, I just want to move us along if we can. I know there is some great questions, if there is more.

Councilmember Yukimura: Thank you.

Councilmember Chock: So, thank you, and remind us that we are talking about something we are all in agreement on in terms of the Resolution, and trust that the message is clear that there is some need. So, we have one (1) more testifier.

Mr. Arakaki: Thank you.

Councilmember Chock: I want to hand the floor over to Councilmember Hooser for a question, and then Councilmember Rapozo. Mr. Arakaki, I think there is one (1) more question if you are available. We want to get through this. Go ahead.

Mr. Arakaki: Oh, I am sorry.

Councilmember Hooser: Thank you, Mr. Arakaki. Thank you for the work you do and I want to make sure that at the end of the day, that we recognize the many good people in the system, teachers that are working really hard, under resourced, working long hours, and it is just sad that this kind of situation comes up which tarnishes everybody and makes everybody feel less than positive, to put I mildly, about the public education system. So, I want to make sure that you know that we appreciate the work that all the good people are doing. From Councilmember Yukimura's comments and others, I think it is clear that this is a process/policy issue which makes it even sadder. It is not really a question, but I would like to you hear it. Thank you for letting me speak.

Mr. Arakaki: Sure.

Councilmember Hooser: I differ a little bit from my colleagues that I do not think any child should be deprived of music, football, baseball, lunch, or anything because their parents cannot afford to pay the fee. The stigma that goes

along with taking some child out of lunch whether you swipe before or after lunch, I think, is just unacceptable. I know you do not make all of those decisions, but I just wanted to share that with you what I thought about it. We are in a time now where people are struggle daily and they do not all know how to fill out the forms to qualify for whatever, but they have their electric bill, their water bill, the cost of living keeps goes up, and they do not want to admit maybe to their child that they cannot afford to pay this. So, I would like to see a policy and ultimately, it is our State government, it is our State Legislators that have to fund this properly. It is just shameful, absolutely shameful, that the State of Hawai'i cannot fund eight hundred dollars (\$800) or five thousand dollars (\$5,000) to make sure people, students, do not have to deal with this. It is not the student's problem. It is not the child's problem. It is the parents, the system's, and it is ours. I just want to share that with you. I hate to pile on because I am not blaming you or anybody for anything, but I want you to know where I am coming from, at least.

Mr. Arakaki: Yes, and I agree. Me, being a former coach, I also have children that did graduate and I have one that is a Sophomore. Being able to play athletics will sometimes keep a student in school, keep them from drugs, and so on. So, how do we provide the mechanisms for them to participate? Same thing for lunches. How do we ensure that all students are eating? Again, they do not have a meal at home, how do we provide that? Funding as far as government, some principals find funding within their budget somehow. How do we do that for all schools because a lot of schools, depending on the size, it just varies because there are a lot of things they need to do. Even if it is eight hundred dollars (\$800) or five thousand six hundred dollars (\$5,600), for some schools, it is a struggle. Yet, I am sure they will make a way to do it because they have been talking about it and we want to really help this effort. So, I totally agree.

Councilmember Hooser: Well, if it is a matter of eight hundred dollars (\$800) or five thousand dollars (\$5,000), I believe, and I would be happy to help. We could go out in the community and go to Rotary Clubs or whatever, but it is crazy that we have to do that given the size of the State budget and given the prior reasons. We are willing to do what we have to do to make sure this does not happen.

Mr. Arakaki: With that, we also need to always remember that the parents that area capable and not take advantage of the generosity of others too, like a credit and payback kind of thing. We need to have them cover that at the end when they are able to. If they cannot, then they do qualify for the free and reduced because their income may vary from year to year. So, we need to support that too.

Councilmember Hooser: Even the parents that are taking advantage of the situation, I do not believe their children should be punished for that.

Mr. Arakaki: Right. It is an adult thing and we do not want to punish the child. I understand that.

Councilmember Hooser: Thank you. Good luck.

Councilmember Chock: Thank you.

Mr. Arakaki: Thank you.

Councilmember Chock: Councilmember Rapozo.

Councilmember Rapozo: Real quick, and I know you want to get out of here, Bill. You have to get to Honolulu to take our important message. Again, one of the comments did occur at Elise H. Wilcox Elementary School. So, I think...

Mr. Arakaki: Was it recent?

Councilmember Rapozo: I would assume it is recent.

Mr. Arakaki: Okay.

Councilmember Rapozo: I have to go back and look at that, but I would just double check on that.

Mr. Arakaki: Okay, I will.

Councilmember Rapozo: When the tray of food is discarded whether it is in front of the kid or not, we know it gets discarded. Do we get reimbursed for that by anybody?

Mr. Arakaki: No.

Councilmember Rapozo: Right, so, the net impact to the State is we lose money.

Mr. Arakaki: Yes.

Councilmember Rapozo: If we give the kid the food, add it to his negative balance, and send the bill to the parent, we have a chance of collecting money. So, that even irritates me more when we are throwing away an opportunity to collect because we want to make a point. I think that is the frustration that my God, we are going to throw it away knowing we will never recuperate this, so we are losing the money. In essence, adding to the cost of the meals for everybody because we are wasting food because we want to make sure that we do not violate this policy and we want to send a message to their parents. So, I think take that back that when we throw the food away, we gain zero (0). We lose. If we feed the kid and send the bill, and the State always has the ability to collect using a collection agency or the State. I do not care if it is two hundred dollars (\$200), three hundred dollars (\$300), eight hundred dollars (\$800) or what, just send them the bill and say, "This is what you owe and we will send it to the collection agency if we have to." I think to throw away food is foolish because that is a direct waste. Thank you. That is all I have.

Councilmember Chock: Thank you. Thank you so much.

Mr. Arakaki: I will be around for a little while more.

Councilmember Chock: Okay.

Mr. Arakaki: Thank you.

Councilmember Chock: Our next testifier, last testifier.

Mr. Watanabe:

We have Stacy Gillette.

Councilmember Chock:

Thank you. Stacey.

STACEY GILLETTE: Good morning Chair Furfaro, Vice Chair Chock, and members of the Council. My name is Stacey Gillette. I am the Keiki to Career Coordinator with Kaua'i Planning and Action Alliance (KPAA). I bring good news today. So, great minds must think alike. Several of you have mentioned the need to creatively solve the issue of the balance owed. We are, Keiki to Career just for those of you in the audience who do not know what we are or what we do, we are a community organization that networks people and programs that support the young people of Kaua'i in helping them meet their needs and the family's. Upon reading the article in The Garden Island newspaper, I reached out to Superintendent Arakaki who is one of our partners as well as Councilmember Chock and offered our support and willingness. So, we are actually supported by the County of Kaua'i. So, thank you for your foresight in establishing this network and an ability to respond to emerging community issues such as these. The good news that I have is that I was able to secure a funder who is willing to cover the balance owed and wipe that clean from the books to allow us the ability to move forward. So, I want to thank the Hale Uluwehi Charitable Fund of the Hawai'i Community Foundation. The donor specifically wants to remain anonymous, but did want to share his sentiment that absolutely no student should go without a meal at school, and he is willing to lend his support in this way. So, thank you.

Councilmember Chock: Thank you. So, on behalf of the Council, I just want to thank you for reaching out. I know you jumped on it really quickly and tried to answer the call. We have some questions. I would like to go to Councilmember Rapozo first.

Councilmember Rapozo: Thank you, and thank you for being here. Thank you for that good news. Is that just for Kaua'i? Is that for the Kaua'i negative balance, and is that to wipe out the eight hundred dollars (\$800) or is it in perpetuity?

Ms. Gillette: That is a good question. I for certain can tell you that it is to wipe out the balance, the eight hundred fifty-nine dollars (\$859) balance currently, although because originally the balance was projected to be five thousand six hundred dollars (\$5,600)...

Councilmember Rapozo: Well, the five thousand six hundred dollars (\$5,600), I want to make that clear. That was what I call the lady, Ms. Owens, she said, "Please note that the lunch account negative balance for Kaua'i public schools are currently at five thousand six hundred dollars and thirty cents (\$5,600.30)." This was dated May 12th. So, I have no idea what it is. I just heard from Mr. Arakaki that this month is eight hundred dollars (\$800). I appreciate that, but I think the issue is deeper. It is the policy that is flawed. Mr. Hooser talked about Rotary Clubs and all of that, and I am saying, that is all great because that is opportunities for the community to help, but this is a State issue. The policy is wrong. I appreciate that. I just want to know how far, and for Mr. Arakaki too because if the donor is going to pay all of the negative balances in perpetuity, then perfect. Keep the policy. Do not waste your time changing it, but I do not think that is what is happening and I just want to make sure that we know what we are getting.

Ms. Gillette: And I appreciate that question, Councilmember Rapozo. I do not believe that is the intent of this.

Councilmember Rapozo: Okay.

Ms. Gillette: This is a gesture of good will...

Councilmember Rapozo: And we really appreciate that.

Ms. Gillette: ...to contribute to finding an immediate solution to the issue at hand.

Councilmember Rapozo: Okay.

Ms. Gillette: But it certainly does not address the long term issues.

Councilmember Rapozo: Thank you.

Councilmember Chock: Thank you. Councilmember Yukimura.

Councilmember Yukimura: My questions have been answered.

Councilmember Chock: Okay. Thank you.

Council Chair Furfaro: I will take the meeting back.

Councilmember Chock: Okay. Do you have a question or I will release her.

Council Chair Furfaro: No, you can release her and call the meeting back to order.

Councilmember Chock: Thank you, Stacey. I appreciate it.

Ms. Gillette: Thank you.

Councilmember Chock: That is all of our registered testifiers for now. I will turn the meeting back over to Council Chair Furfaro.

Councilmember Chock returned Chairmanship to Council Chair Furfaro.

Council Chair Furfaro: Thank you very much. I would like to call the meeting back to order as we have a very full discussion today.

There being no further testimony, the meeting was called back to order, and proceeded as follow:

Council Chair Furfaro: Thank you Vice Chair Chock. I think the discussion here today was very important for the message that we send to Mr. Arakaki. Bill, I want to point out to you that what I started with in the very beginning was the fact that paragraph five on page 3 of your own policy allows you folks to build a receivable and work individually with these accounts that are delinquent. I do not know if everybody realizes, the State operating budget is

twelve billion dollars (\$12,000,000,000). You have a five thousand six hundred dollars (\$5,600) receivable here with children that are having meals taken away from them, and as Mr. Rapozo commented, the food is highly perishable. It is a cost when you throw it away. It is a cost that is incurred. So, it is not about curtailing a cost. Please take a message back on working on these negative balances and come up with a solution that exists in your existing policy. We depend on you, Bill, to negotiate those points skillfully, and we trust you can do that. Our meeting is back to order. Other members with comments before I call for the vote?

Councilmember Kagawa: Well, I think I saw a hand go up in the public...

Council Chair Furfaro: I want to say that...

Councilmember Kagawa: ...that did not sign up...

Council Chair Furfaro: Okay. I asked people in the very beginning when the agenda item started, I have called the meeting back to order. So, we have a very full...we have eight (8) tax bills to hear today, and as I started in the beginning, we have a policy statement we are making, but at the end of the day, we do not have any corrective influence on the DOE. You saw the hand where? Come right up, Klay. I am going to suspend the rules. You are our last speaker.

There being no objections, the rules were suspended to take public testimony.

KLAYTON KUBO: How is it going? Klayton Kubo, Waimea, Kaua'i. I guess if children are the future, meaning the kids, then maybe we need to take care of them better instead of just pushing them aside. There are other measures that I can see that, I guess this is Mel, this is another State issue. That is a good one that you are doing. No doubt. I do not take this away from you. I highly respect you. As for the State, maybe they need to stop dropping the ball every time and get with it. Do not get me wrong, I had to call the school up, Waimea High School, just this morning to get verification if my kid has sufficient funds in his account. No matter what I heard, it seems like the bottom line is going to be if you scan the card before the kid goes into the line, grab his lunch, and he still is going to be rejected. That is not cool. Not at all. Not for a kid that maybe that is the only lunch or maybe that is the only food the kid is going to eat during the day. So, have some sympathy. Again, the State needs to get on it. It is a State issue. *Aloha*.

Council Chair Furfaro: Thank you.

There being no further testimony, the meeting was called back to order, and proceeded as follow:

Council Chair Furfaro: I have called the meeting back to order, I have summarized, and now I have other Councilmembers that would like to give testimony. Mr. Kagawa.

Councilmember Kagawa: Thank you, Chair. I am going to be supporting the Resolution. I want to thank Mr. Arakaki for coming and answering a lot of questions, especially at the elementary school level, that will not happen there. I really appreciate that. I have several issues with, I guess, our lunch program. Back when I went to elementary school, it was a quarter, and it was really easy for everybody to put that one (1) quarter in our pocket. I think when I

went to high school it became fifty cents (\$0.50), but even that was not too bad. We could always find a couple quarters around in our house and make sure that we had our lunch money for the day. Now, because it is up to two dollars and twenty-five cents (\$2.25) for nobody on free and reduced, it is not that easy to find two dollars and twenty-five cents (\$2.25) around nor can you do that. Now, the payments need to be made prior. You need to have like an account with money in it. I guess it makes it a little more difficult for students, not like the old days where like I said, it was only a quarter. I think most of us ate because it was so cheap. Even back in the 1970s or 1980s, a quarter was not much. Today, it is a lot more than it was, two dollars and twenty-five cents (\$2.25), again, is a significant cost.

My other issue with the lunches is that these free and reduced plan, which is a Federal *kuleana*, but just to I guess point out the problem I have with it is that for a family of four (4) your combined income needs to be fifty thousand seven hundred forty-six dollars (\$50,746) or less. My issue with that is that if you make under that income, you pay thirty cents (\$0.30) per meal. If you make fifty-one thousand dollars (\$51,000) or fifty-five thousand dollars (\$55,000), you have to pay two dollars and twenty-five cents (\$2.25) for every meal. That is my problem, I guess, with overall with taxation Statewide and Federal. There is always that number where if you make one dollar (\$1) more than that number, you get penalized a lot more as though you are rich. The people under that number, they reap a lot of the benefits and so I have some issues with our method of taxation at Federal, State, and even with our lunch calculations.

My last issue with the lunch program I think that also needs to be looked at is the amount of time that the child has to eat. It is a half an hour at every school, especially now, we have new mandates about how much classroom time it needs to be. DOE, they are doing the best they can with whatever time. They have teacher contracts and what have you, but a half an hour. I remember my daughter saying, I asked her, "Do you eat every day at school," and she said, "No, it is not enough time." Kaua'i High School, that old cafeteria that has been operating since the 1960s, I think, is trying to feed a student body of, I do not know, one thousand four hundred (1,400) or what have you. She said by the time you get your food, you have five (5) minutes to eat whatever you can, and done. The bell is ringing. I mean, is that reasonable? Does that need to be altered? At Kapa'a High School, students tell me the same thing. They said if you do not get there early, it is difficult to wolf down your food, and make it to class before the bell rings. So, that is not in this Resolution, but I just wanted to bring it up. I have multiple issues because I think at the end of the day, that last period, if the student does not have a full stomach or just ate a candy bar or something, they are not functioning at their highest potential. Now, that we are trying to push "No Child Left Behind," we want to make sure every student is college/career ready, I think they need to have a good healthy meal in order to perform every day. It is not our *kuleana*, but it is our *kuleana* when the public brings it to us. It is our job to do the Resolutions or whatever that can improve the situation. That is why today, I will be supporting this Resolution. Thank you, Chair.

Council Chair Furfaro:
going to save Mr. Rapozo for last.

Members? JoAnn, you want to speak? I am

Councilmember Yukimura: Alright.

Council Chair Furfaro: Just before myself. Do you want to speak now?

Councilmember Yukimura: Surely.

Council Chair Furfaro: Go right ahead.

Councilmember Yukimura: Thank you, Chair. Thank you, Councilmember Rapozo, for bringing this issue forward. It was something I do not think most of us were aware of, and as I said before, it really reflects poorly on our school system that a child would go hungry from lunch. Even though I did talk about the procedural need to help not waste food and not stigmatize a child, I think the bottom line is that every child needs to eat a good lunch or be able to eat a good lunch. So, our policy needs to be designed to meet that goal. I believe it can meet the other goals of having people be responsible for their *kuleana* as well because I think that is an important value to transmit to our children. So, I believe it really is in the structure and design of the policy. I am thankful that Mr. Arakaki is going to bring that forward to a Statewide forum to see how to change that policy. I look forward to the day when it can just be a given that every child will be able to eat a good lunch. That is for two (2) reasons. One, because just from a standpoint of humanness, our children need to eat, but also, if they are to achieve academically, it is an essential piece of that goal as well.

Council Chair Furfaro: Okay. Other members? Mr. Chock.

Councilmember Chock: Thank you, Chair. I think everyone knows health for me is really important and the consistency of that. I mean, healthy lunches, getting the lunches, but anything. So, for me, yes, we talk about policy. I understand that aspect of it, but when it comes to the needs of our community's health, I think that we just need to step beyond. That is why I will be supporting this. There are probably many reasons for the current situation, but one of the reasons that I would like to step outside of policy here is to really think about mindset again because our public servants need to be empowered enough to when they see something happening like lunches being thrown away and students being shamed or feeling emotionally distressed because of it, especially when they have health issues, that they should be willing and able to step up and say something about it. I am not just talking about in the DOE. I am talking about everywhere in our communities. We need to stop having that robot mentality in order to really act on the things that are necessary for us to get forward, move forward. So, again, there are some root causes. I am really appreciative of Keiki to Career for stepping up and just taking the lead to try and find an immediate solution for anyone who needs help. I looked into National Association of Counties (NACo) and have applied for some feedback because there is a program to help with building the operational aspects of our lunch system. So, maybe that is another tool that we can throw in there and I intend to hear back from them very shortly. So, very supportive of this initiative. I just want to thank Councilmember Rapozo, again, for bringing it forth. Thank you.

Council Chair Furfaro: Mr. Hooser.

Councilmember Hooser: Yes. I want to also thank Councilmember Rapozo for bringing it forward. I think it is really a symbol, if you would. The word *kuleana* was mentioned earlier, and it is our *kuleana*. This is where the rubber meets the road. This is where citizens can get up close and personal with their government, with the people that represent them. You can say it is a State issue or Federal issue or County issue, but at the end of the day, it is a community issue and we are the ones that are here day after day out in the community. I served at the

State level for eight (8) years and you are more out of touch because you are in Honolulu and you are dealing with other issues. You are not dealing as much with the day to day operations. So, I applaud this Council for not saying on these issues that oh, it is not our responsibility. Let somebody else do it. So, we should speak out loudly when things like this come to our attention. The community brings it to our attention, and it is our responsibility, our *kuleana* to do something about it whether it is a Resolution or whether it is an Ordinance or whether it is just speaking out. So, I applaud this Council for taking those actions. I think that it is a symptom of our economy that we have people in the community, I mean, we will always have people in the community that have trouble paying for day to day expenses, but this is a real issue with the cost of living here whether it is electric bill or water bill or taxes, their mortgage, their rent, and it is an increasingly important issue. We all face it no matter what your social economic position is. People have bills to pay and it is really sad when you think about the disparity of people. We have a yacht in Hanalei Bay that could fund operating these schools for years, just the cost to build that yacht, and yet we are struggling here over eight hundred dollars (\$800) to feed our kids. There is something wrong with that picture, there is something wrong with the way the State sets priorities, and I for one, am happy that we are able to send that message out today to the community, to the people that are watching. Students are watching us today, teachers are watching, parents are watching, and I am proud that we are able to step up to say this is inappropriate and you should not take a child's lunch away from them because mom and dad did not pay the bill. You should not take their musical instrument away or their right to play sports. We should honor and support those students, and give them everything that we can. I am happy to support the Resolution. Thank you, Chair.

Council Chair Furfaro: Thank you. Before I turn it over to Mr. Rapozo, I would like to give him the conclusion comments here. I do want to reiterate, Bill, please challenge the system. In my business world, I read policies and contracts all of the time. Section 2 says, "The schools could decide to deny the meal." It does not say "You shall deny the meal." Also, in Section 5, there is a policy to reconcile at the end of the year, not daily, especially for the short-term pieces. So, again, I encourage you to negotiate skillfully within the existing policy. Mr. Rapozo, I am going to give you the floor. We are going to call to receive the Communication, and then I will call a roll call vote on the Resolution. You have the floor, sir.

Councilmember Rapozo: Thank you, Mr. Chair. Again, thank you to Mr. Arakaki for being here today. Thank you to Facebook for bringing this to our attention because a lot of people think that the Council knows everything that is going on, and it is simply not true. If we are not informer/notified, we do not know. When something like this comes up, I was made aware of it in May and obviously through some of the communications that I have through the State, it brought me, when I found out that actually there was a lot of talking going on, meeting and all of that, I felt that the Resolution would be a better way to bring awareness, not just to Kaua'i, but to the State because it is a Statewide issue. I know principals get evaluate every year and I do not know how that works. I am not sure, and I meant to ask Mr. Arakaki, but I did not want to prolong the session. I am assuming they get graded every year, and I would assume and I am hoping that it is not, but the negative balance amount, I am hoping that is not used as a negative rating to the principal. I am feeling like it probably is, and that is why principals wan to keep that number down because they do not want to get a bad rating.

As I read the, and I will read this because I think it is...from that lady, Ms. Owens. She tells me, "If you would like to help the schools in your County, may I suggest you speak to the principals of schools that have negative lunch loans. Last year, one (1) school had eight thousand dollars (\$8,000)." It is like she is angry. Last year, one (1) school had eight thousand dollars (\$8,000). Okay, and what is your point? How many kids did not eat? So, I think nowhere in the policy does it say the kid will not eat. That is something that the Department of Education, the principals have allowed to happen.

I asked the question about how do we know that the parents got the notification, and we really do not know. We hit the button, the little recorder goes out, now listen to this, right? Mom and dad is working, sometimes only mom, sometimes only dad, who knows. The recording goes out, nobody gets that message that day, and even if they get the message as we have seen through comments, that they cannot run to the school and make the payment anyway. A voice recorder is not confirmation that the parent got the message. In the policy, Item B, at a minimum, minimum means minimum, the school must ensure parents and guardians are fully aware of their obligation to pay for their children's meals. At a minimum. In other words, you need confirmation that the parent was notified. I raised a very simple solution. Send the paper home with the kid, have the kid have the parent sign, and bring it back. If a kid has diabetes, if a kid has epilepsy, if a kid has low blood pressure and he gets denied a meal and that kid drops dead on the field or at the park or at class, where are you going to come back and say, "well, we left a message on the mom's phone. We sent him a letter with the kid, but we did not get confirmation." What happens then? That is going beyond what I am concerned about, but I am just saying that if I was the State worried about liability, that is number one.

It is never a money issue, and I have said this numerous, numerous times. My colleagues are probable irritated with me saying this, but it is never a money issue. It is always a priority issue. When you pay forty-five thousand dollars (\$45,000) to paint Abercrombie's portrait to put up at the State Capitol, and you are telling us "Oh, that is eight hundred dollars (\$800)," it is not a money issue because do we need that stinking portrait of Governor Abercrombie? Hell no. Hell no, but these kids should be eating.

Keiki to Career, thank you very much if you are still here. Thank you very much because you know what? That is what this community does. They hear the call, they go out and the contact people, and they get people to write checks. Thank you, and please convey that to the anonymous donor. Is that their job or is it the State's job to sit down and say it? Today's meeting when Mr. Arakaki goes back, I hope this is the message, "Hey, we need to figure out a way today that no kid will denied a lunch and that we will not throw away a lunch because someone is fifteen cents (\$0.15) short or forty cents (\$0.40) short." That is the discussion I am hoping will be had today, and I hope by the end of today as long as they do not go into overtime, just come out and say, "We are going to add a line in this policy that says, 'No kid will be denied lunch.'" From now until the time they come up with a revision to this policy that satisfies the need to collect this outstanding moneys, no kid will be denied a lunch. That is what I want to see happen today because I will tell you, if this was a County Council issue, I can guarantee you just by the comments I have heard and how I know my colleagues, we would change that policy today. This body would. With all my heart, I now we would do that. For a cost of eight hundred dollars (\$800) or five thousand dollars (\$5,000), I mean, please.

I am going to follow-up with Mr. Arakaki and if we have to pass a money bill, if I have to introduce a money bill for five thousand dollars (\$5,000) or seven thousand dollars (\$7,000) or ten thousand dollars (\$10,000) to pay the State for the schools of Kaua'i because of their threat to bankrupt the State because we loss five thousand six hundred dollars (\$5,600), I will do that. We give money to the marathon, we give money to sister cities, we give money all over the stinking place, but if it is going to take this Council to step up and give some money to the State so that they can continue painting portraits of governors and all of that and letting our kids starve, I will do that. I have no doubt that this body would support that. So, Mr. Chair, I appreciate it. I know we have a rough agenda today, and I appreciate the extended time. Although this is only a policy statement, sometimes this Council has to do policy statements like this because really, this issue has been going on for a long time. It was first brought to the State's attention in May, and we have had no activity, no response. You saw the statements. Two (2) days ago, a kid was denied lunch. So, obviously, the State has not taken this serious. Now, when it is no Hawai'i News Now, KITV 4, and all of that, now the State is like, what do we do. Let us hold a leadership meeting, let us do damage control because that has what has occurred. If that is what it takes to get our kids fed, you know what? Call me politically pandering. Call me what you want. It is all cool. *Aloha.*

Council Chair Furfaro: Okay, members, since we already had a motion and a second on the Resolution, I would like to call a roll call vote on the Resolution, and then follow-up with the receiving of the actual Communication.

(Councilmember Bynum was noted as present.)

Council Chair Furfaro: So, this is a roll call vote, please, on Mr. Rapozo's Resolution.

The motion for adoption of Resolution No. 2014-44 on second and final reading was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Mr. Watanabe: Seven (7) ayes.

Council Chair Furfaro: 7:0. Thank you very much.

Councilmember Rapozo: Thank you all.

Council Chair Furfaro: Let us now go to receive the Communication. I will just do that by voice, if I can, Rick.

Councilmember Yukimura moved to receive C 2014-249 for the record, seconded by Councilmember Rapozo, and unanimously carried.

Council Chair Furfaro: Let us now go back to the calendar. Bill, thank you very much for being here.

Mr. Watanabe:
Communications.

We are on the top of page 2,

COMMUNICATIONS:

C 2014-250 Communication (09/03/2014) from the Housing Director, requesting Council approval to decline the County's option to repurchase Unit No. 304, Ho'okena at Puhi, located at 2080 Manawalea Street, Lihue, Hawai'i, and to grant the owner a one-year waiver of the buyback and allow the market sale of the unit: Councilmember Yukimura moved to approve C 2014-250, seconded by Councilmember Kagawa.

Council Chair Furfaro: I have a motion to approve and a second. Is there any public testimony on this item?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Discussion members?

The motion to approve C 2014-250 was then put, and unanimously carried.

Council Chair Furfaro: Next item.

C 2014-251 Communication (09/08/2014) from the Executive on Aging, requesting Council approval to apply for, receive, and expend Year One funds in the amount of \$62,847, from the 2015 Retired and Senior Volunteer Program (RSVP) Competition awarded by the Corporation for National and Community Service for a three (3) year grant period from April 1, 2015 to March 1, 2018, with County matching funds of \$90,635, to assist the County of Kaua'i Agency on Elderly Affairs, Kaua'i RSVP, in carrying out a national service program as authorized by the Domestic Volunteer Services Act of 1973, as amended, (Title 42 United States Code (USC), Chapter 22): Councilmember Yukimura moved to approve C 2014-251, seconded by Councilmember Kagawa.

Council Chair Furfaro: I have a motion and a second. Did you want the floor, JoAnn?

Councilmember Yukimura: Yes, please.

Council Chair Furfaro: You have the floor.

Councilmember Yukimura: This is an annual grant application by our Agency on Elderly Affairs. I just want to say, it is a remarkable program and I want to commend the Agency on Elderly Affairs that applies for and administers this grant. It enables three hundred fifty (350) seniors at twenty-five (25) volunteer stations around the island ranging from companion visits, telephone check-ins with elderly, financial literacy training, tutoring, at-risk ecosystems, working with veterans and their families, working at thrift shops for fundraising for non-profits, outreach at long term care facilities, and community gardens. It is an amazing program that enables our seniors to contribute their immense talents and skills in a voluntary setting. The County itself, is a recipient of those services. It is just a

wonderful program in terms of the new generation of seniors who are continuing to contribute to this community in really valuable ways. So, *mahalo* to all of those seniors and to the Agency on Elderly Affairs.

Council Chair Furfaro: Thank you very much for your comments, JoAnn, and many of us also feel strongly about these services and volunteer programs that *kupuna* in our community stand by. Is there anyone in the audience that wishes to testify on this item?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Further comments? Did you want to say something, Mr. Chock?

Councilmember Chock: No.

Council Chair Furfaro: No.

The motion to approve C 2014-251 was then put, and unanimously carried.

Council Chair Furfaro: Let us go over to Committee Reports because many of the other five (5) Communications deals with going into Executive Session. So, let us go to Committee Reports.

There being no objections, the Committee Reports were taken out of order.

Mr. Watanabe: Committee Reports on page 3.

COMMITTEE REPORTS:

PLANNING COMMITTEE:

A report (No. CR-PL 2014-06) submitted by the Planning Committee, recommending that the following be Approved on second and final reading:

“Bill No. 2540 A BILL FOR AN ORDINANCE AMENDING ARTICLE 17, CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO NONCONFORMING USE CERTIFICATES FOR SINGLE FAMILY VACATION,”

A report (No. CR-PL 2014-07) submitted by the Planning Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2461, Draft 2 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (*Amendments to the Shoreline Setback Ordinance*),”

Councilmember Bynum moved for approval of CR-PL 2014-06 and CR-PL 2014-07, seconded by Councilmember Rapozo.

Council Chair Furfaro: I have a motion and a second. Discussion on these Committee Reports? Anybody wishing to speak?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order and proceeded as follows:

The motion for approval of the reports were then put, and unanimously carried.

Council Chair Furfaro: Next item.

COMMITTEE OF THE WHOLE:

A report (No. CR-COW 2014-13) submitted by the Committee of the Whole, recommending that the following be Received for the Record:

“COW 2014-04 Communication (08/28/2014) from Council Chair Furfaro and Councilmember Yukimura, requesting the presence of the State Department of Health and State Department of Agriculture, to present a briefing on the recently-released “2013-14 State Wide Pesticide Sampling Pilot Project Water Quality Findings,”

Councilmember Kagawa moved for approval of CR-COW 2014-13, seconded by Councilmember Rapozo.

Council Chair Furfaro: Discussion? Comments from the audience?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order and proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

Council Chair Furfaro: Next.

Mr. Watanabe: Chair, are we going over to the Executive Sessions?

Council Chair Furfaro: It looks like that is where we need to go next, yes.

Mr. Watanabe: Okay. County Attorney.

Council Chair Furfaro: Can I have a County Attorney up?

There being no objections, the Executive Sessions were taken out of order.

There being no objections, the rules were suspended.

ALFRED B. CASTILLO, JR., County Attorney: Good morning Council Chair and Councilmembers. Al Castillo, County Attorney. Would you like me to read...

Council Chair Furfaro: Read them all, Al.

Mr. Castillo: Read them all?

Council Chair Furfaro: Yes, please.

Mr. Castillo: Okay. Thank you.

EXECUTIVE SESSIONS:

ES-758 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session for discussion and decision making relevant to Section 20.02(B) of the Kaua'i County Charter, to wit, investigating breach of confidentiality relating to Executive Session meetings, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-759 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on Special Counsel's continued representation of Henry Barriga and Sherwin Perez in Lynell Tokuda, et al. vs. Chris Calio, et al., Civil No. CV13-00202 DKW-BMK (U.S. District Court), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

(Councilmember Kagawa was noted as not present)

ES-760 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on Special Counsel's continued representation of Defendant Chris Calio in Lynell Tokuda, et al. vs. Chris Calio, et al., Civil No. CV13-00202 DKW-BMK (U.S. District Court), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-761 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on the retention of Special Counsel to represent the County of Kaua'i, and Robert F. Westerman, Kalani Vierra, and Norman Hunter in their official capacities for the County of Kaua'i, Kaua'i Fire Department in Carl Ragasa vs. County of Kaua'i, et al., Civil No. CV14-00309, (Fifth Circuit Court), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-762 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on the retention of Special Counsel to represent the County of Kaua'i in Christina Pilkington vs. County of Kaua'i, et al., Civil No. 14-1-0123 (Fifth Circuit Court), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-763 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on the retention of Special Counsel to represent the County of Kaua'i in EEOC Charge No. 486-2014-00468 (United States Equal Employment Opportunity Commission), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-764 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide a briefing regarding EEOC Charge Nos. 486-2013-00066, 486-2013-00345, 486-2013-00047, 486-2013-00343, 486-2013-00005, 486-2013-00342 concerning the County of Kaua'i, Kaua'i Police Department, to obtain settlement authority, and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-765 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on the Council's authority to accept grants of easements as it relates to Section 9-2.9 of the Kaua'i County Code 1987 as amended, and legal issues relative to the processing of conveyance documents and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Mr. Castillo:

Thank you.

Council Chair Furfaro:
members? Mr. Hooser.

Thank you. Any questions from the

Councilmember Hooser: Yes, Chair, I have several questions. I can go one (1) at a time, if I could, through the Executive Sessions. My first question is on ES-759. This is a briefing on Special Counsel's continued representation of Henry Barriga and Sherwin Perez in Lynell Tokuda, et al. vs. Chris Calio, et al. Total, we have a whole lot, a big long list here and I think it is good for the public to know what exactly we are talking about. So, I would like the County Attorney to give us an explanation of what this is. So, it is someone is suing someone, civil. So, that is the Kaua'i Police Department? Do you want me to summarize it or would you like to summarize it?

Council Chair Furfaro: No, I would like to do this. I would like to call up other Deputies, and if you could go down through the numbers and provide us what you can legally give us in a way of a summary. So, if you would like Mr. Jung to come up and join you.

Mr. Castillo: No, Council Chair, that is fine. In the question that Councilmember Gary Hooser has, these matters are pending litigation and quite briefly, you asked about number 2 and number 3?

Council Chair Furfaro: He asked about ES-759 and I believe...

Mr. Castillo: ES-760?

Council Chair Furfaro: ES-760.

Mr. Castillo: And this involves a shooting incident that occurred in Oma'o, and that is about it.

Councilmember Hooser: I think it is about a little bit more than that. So, this is the person that was shot's family suing the County and police officers? Is that correct?

Mr. Castillo: That is correct.

Councilmember Hooser: Okay. So, I mean, it is not just a shooting incident. There are two (2) police officers. I assume they are police officers. It does not say they are police officers.

Mr. Castillo: They are police officers.

Councilmember Hooser: Okay. So, the family or Lynell Tokuda is that the family?

Mr. Castillo: The family or the estate is suing the County of Kaua'i, basically.

Councilmember Hooser: Okay. So, allegedly the police officers shot and killed this person in Oma'o. Is that...

Mr. Castillo: That is the basis for the complaint against the County of Kaua'i.

Councilmember Hooser: Okay. So, there are two (2) police officers in ES-759 and then one (1) police officer in ES-760?

Mr. Castillo: That is correct.

Councilmember Hooser: And what exactly is being alleged that they did or did not do?

Mr. Castillo: I do not want to get into the facts of the case.

Councilmember Hooser: Okay. I mean, they are all...

Mr. Castillo: This is for Executive Session.

Council Chair Furfaro: That is your privilege as the County Attorney.

Mr. Castillo: Yes.

Council Chair Furfaro: I have given Mr. Hooser some leeway to reference these two (2) cases. You take us to what point you can expand on his questions...

Mr. Castillo: And that is about all I...

Council Chair Furfaro: ...and then you tell us where you cannot expand.

Councilmember Hooser: Okay.

Mr. Castillo: I do not want to...

Council Chair Furfaro: Mr. Hooser.

Councilmember Hooser: And I appreciate that, Chair.

Council Chair Furfaro: You have the floor.

Councilmember Hooser: I understand that some of this discussion has to be in Executive Session, but I also believe that the public needs to know what the basic issue that we are dealing with here. We have a long list. Some of them are just identified by numbers. In addition to this, what are the costs?

Mr. Castillo: I do not...

Councilmember Hooser: Right now, we have Special Counsel...

Council Chair Furfaro: Excuse me just a second. Mr. Mickens, if you want to comment, I will ask you to come up later, but he is our attorney and he is giving us the rationale. I would rather hear his explanation than your echoes in the background. You will be given a chance to speak again before we go into Executive Session. Okay, Mr. Hooser, you have the floor.

Councilmember Hooser: So, my question is, what are the costs to-date of Special Counsel and what are we expecting it to cost?

Mr. Castillo: I am sorry.

Council Chair Furfaro: Mr. Hooser, you still have the floor.

Mr. Castillo: Yes, I need to respond to those questions now. I am sorry. Had I had the courtesy of the forewarning of the questions that I would be asked in open, then I would have had that information for you. I do not know what the exact costs are to-date. Had I known that you would be needing public information, what I would have done is I would have brought the complaint before me so that I could share with you and the entire people of this island

regarding what the complaint is. That is to the extent. Chair Furfaro, I request that in the future if I am going to be asked questions in public, which deviates from our normal, than I would ask that I be given prior information and notice. Thank you.

Council Chair Furfaro: Well, let me...

Councilmember Hooser: Chair...

Council Chair Furfaro: Let me give you a response to that first. Hold on, Mr. Hooser. Let me give you a response. If there is reasonable information that pertains to the case, you and your staff should be prepared to be able to answer questions in Executive Session, which may also reference the reconciliation of the fees to-date. So, let us find ourselves having a mutual understanding that part of your preparation is having that information available going forward.

Mr. Castillo: And I do agree. Excuse me, Chair, I do agree with that, and all I am asking for is the courtesy because I do have certain attorneys that are assigned to certain cases. We are definitely prepared to engage in Executive Session. So, that type of information is and will be readily available for all of you. What I am just saying is I am the person that is here at this point and time, and had I known then, I would have been prepared.

(Councilmember Kagawa was noted as present)

Mr. Castillo: That is all.

Council Chair Furfaro: And I am saying, going forward...

Mr. Castillo: Yes.

Council Chair Furfaro: I would encourage you to know when it comes to costs associated with particular cases, we should be prepared.

Mr. Castillo: Okay.

Council Chair Furfaro: Okay? Mr. Hooser, you have the floor.

Councilmember Hooser: Yes, thank you, Chair. I just want to, for the record, the County Attorney's Office is asking us for seventy-six thousand dollars (\$76,000), two (2) thirty-eight thousand dollars (\$38,000) requests for this case, and they should what this case is costing us to-date. That is basic information and if the County Attorney is not prepared for it, maybe one of his Deputies has that, but if we are going to be appropriated money for future costs, we should know what we paid for up to-date. This is not a surprise "got you" question.

Council Chair Furfaro: I think I just reconciled that, going forward, we should be, and I agree with you.

Councilmember Hooser: And I need that information before I vote on this issue today.

Council Chair Furfaro: Well, when we go into Executive Session, it is quite possible that the County Attorney's Office can be prepared by having someone doing that research and sharing that with us in session, and if we come out, we will communicate the same.

Councilmember Hooser: Thank you.

Council Chair Furfaro: Okay?

Councilmember Hooser: And there are other items, but if anyone...shall I move forward or yield to other questions on these two (2) items?

Council Chair Furfaro: If your question is going to be along the parallel of costs, I think what I am saying to the County Attorney now is we may want to be able to handle that when we are out in public on the Communications because the way we are right now, we have the Executive Sessions going in, we come out at 1:30 p.m. for public hearing, and I believe we have some attorneys that need to be in court later this afternoon.

Councilmember Hooser: Okay.

Council Chair Furfaro: So, I will make that as a blanket statement about cost reconciliation.

Councilmember Hooser: Right. So, the cost issues, I could hold those until we come back out and talk, but I will be asking similar questions for every single one of these. What is the cost to-date? What is the anticipated cost for the future? I can move to ES-761. This is the County of Kaua'i, Robert Westerman, Kalani Vierra, and Norman Hunter in their official capacities for the County of Kaua'i Fire Department in Carl Ragasa vs. County of Kaua'i. What is Mr. Ragasa charging the County of Kaua'i with?

Mr. Castillo: I do not...

Councilmember Hooser: What is the basis of the complaint?

Mr. Castillo: I am sorry. I do not know what the complaint says. I know that right now we have four (4) Deputies on it, and if they are here, they could come and answer it.

Council Chair Furfaro: I have invited Mr. Jung up earlier. I would suggest you have him available to us right now. So, consider this my second request.

IAN K. JUNG, Deputy County Attorney: Good afternoon Council Chair and members of the Council.

Council Chair Furfaro: Good afternoon.

Mr. Jung: Deputy County Attorney, Ian Jung.

Council Chair Furfaro: Is your microphone on, Ian?

Mr. Jung: Yes, it is.

Council Chair Furfaro: Okay. I am going to give the floor to Mr. Hooser. He had a question specifically to ES-761.

Councilmember Hooser: So, ES-761, you are asking for retention of Special Counsel in the case concerning Carl Ragasa vs. County of Kaua'i involving the Fire Department. So, my question is, what is the basis of the complaint? What is Mr. Ragasa charging that the County did wrong or the Fire Department did wrong?

Mr. Jung: This particular matter is a Federal Court matter dealing with personnel issues that are ongoing. So, I am not going to comment on any of the facts, obviously. One (1) of the major claims in there is an act of retaliation, which is being evaluated by our office now, and the request for Special Counsel has been submitted. So, some of the accounts, there are a number of accounts regarding certain things, but the basis for the claim is retaliatory actions.

Councilmember Hooser: I understand one hundred percent (100%) that you cannot give away things, certain items have to be held in secret. I just want to be as clear as I can, and the public is clear. So, is it Mr. Ragasa claiming that the County or the Fire Department retaliated against him for complaint he made?

Mr. Jung: The way lawsuits work, and obviously this is being generated for public interest. The way lawsuits work is a plaintiff will file a complaint a defendant or a number of defendants. A plaintiff can allege certain things. Whether they are true are not is up for either the jury or a Judge to decide if there are motions practice, or a jury trial. As of this point, what is in a complaint, especially the one Mr. Ragasa has filed, these are merely allegations that still need to go through a morass of discovery of motions practiced in terms of parsing out some of the counts, and going through legal wrangling in terms of what the law says and how it applies to certain allegations and the facts.

Councilmember Hooser: Could you outline the allegations? Acknowledging that they are allegations, could you give us a brief summary of what they are?

Mr. Jung: I mean, that would take days and we could get the...I do not have the complaint with me right now, but we could go and get the complaint if you folks want to go through every single...

Councilmember Hooser: I mean...

Mr. Jung: ...allegation in the complaint.

Council Chair Furfaro: It is not what we want to do, okay?

Mr. Jung: Okay.

Council Chair Furfaro: What we want to do is follow the rules of our order here. We have a member that has specific questions, and if the summary complaint is available to us, I would suggest you have somebody get it for us because we are not going to find ourselves breaching our ability to fulfill our obligation to protect the County of Kaua'i, but the complaint is a public document?

Mr. Jung: Sure, it is public and it is readily available to the Councilmembers as well as members of the public who are interested in what the allegations are.

Council Chair Furfaro: Thank you, Mr. Jung.

Mr. Jung: We, internally, do a review sheet of the allegations and then do our own attorney work product in terms of our own summaries, but obviously we are going to keep that confidential because we do not want to tip our hands to the other side, obviously.

Council Chair Furfaro: Understood.

Mr. Castillo: Then, Council Chair?

Council Chair Furfaro: Yes.

Mr. Castillo: I guess what I will do is make sure that when a complaint is received by our office, that the Council has a copy of the complaint, which is public record, so that we can speed up the time.

Council Chair Furfaro: Yes, and I would appreciate that sincerely, Al and Mr. Jung. The basis is clearly Mr. Hooser wants to make sure we are transparent to the public and what is public information is available to the public through his queries. You still have the floor, Mr. Hooser.

Councilmember Hooser: Thank you. What I am looking for is just a few words. Is this an employee alleging discrimination? Is this an employee alleging unsafe workplace? Is it that type of complaint? Is it a – what do you call it, grievance, against the boss not treating them well or is it something? I mean, that is what I am trying to get at.

Mr. Jung: Yes, as I stated earlier, there is an allegation of retaliatory actions based on issues of suspensions and things.

Councilmember Hooser: Okay.

Mr. Jung: And again, I do not want not get into the details of the suspension because...

Councilmember Hooser: No, no. I got that.

Mr. Jung: ...this particular employee does have rights afforded to them.

Councilmember Hooser: No, and I understand that. We have, for the record, six (6) different Executive Session items totally eleven (11) different, what looks like employee grievance type issues at a variety of different Departments. I think it is important that the public know a little bit about what is going on. I have asked the County Attorney's Office for information and have not gotten these answers at this point. So, this is the only opportunity I have as a Councilmember and the public has to understand what is going on. So, that is why I am asking the questions. So, if we can move on to the next one, if I may, Chair?

Council Chair Furfaro: Yes, you have the floor. Again, I just want to reiterate, the questions that Mr. Hooser has sent to you, we are pending some responses. As you know, that communication goes through my office as well, but I am going to let him continue with his questions, and then Mr. Bynum.

Mr. Castillo: Well, Council Chair.

Council Chair Furfaro: Yes.

Mr. Castillo: May I interject because I do not want the public to get the impression that we are ignoring our duties. Part of our duties in respect to what occurs with the Administration's side is there are clear boundaries between what the Administration does and what our legislature at the Council does. As far as I am concerned as the County Attorney, I have to protect all of the agencies and all of the employees. You may ask a question and the answer that you may receive is, "I am sorry, I cannot answer that question at this point and time" or "I am sorry that the matter is not ripe or the matter is not yet appropriate for consideration by the legislative body." So, those are answers, and without disclosing the communications that I have had between all of my agencies that I serve on, those are challenges and issues that I am confronted with.

Council Chair Furfaro: I understand your scope that you are referring to. I think Mr. Jung did an excellent job in responding to us his concern about any breach of information that could be used for our well-being during a legal case. I thank you for that, but all I am sharing with you is your response. Where you can respond, respond. Where you cannot respond, just flat out tell us you cannot respond, and let us move on.

Mr. Castillo: Thank you.

Council Chair Furfaro: Go ahead, Mr. Hooser.

Councilmember Hooser: These questions are all within the purview of our legal authority. This is about costing the County lots of money, and this Council is the one that authorizes those funds to be spent.

Council Chair Furfaro: I do not need to be reminded of that, Mr. Hooser.

Councilmember Hooser: Yes, and I do not mean to be looking at you.

Council Chair Furfaro: I am going to let you move on with questions...

Councilmember Hooser: Right.

Council Chair Furfaro: You have the floor for the County Attorney.

Councilmember Hooser: The County Attorney challenged whether or not our authority so I just wanted to respond to that. Thank you, Chair.

Council Chair Furfaro: Okay.

Councilmember Hooser: I have several communications, and they have not responded, which I can get to at the appropriate time. So, we are asking ES-762. This is again, you are asking for Special Counsel to represent the County of Kaua'i in Christina Pilkington vs. County of Kaua'i. So, what is the allegation and the complaint, and what office/Department of the County does this involve?

MAUNA KEA TRASK, First Deputy County Attorney: For the record, First Deputy County Attorney, Mauna Kea Trask. For ES-762, this case involves a personnel dispute between former Americans with Disability Act (ADA) Coordinator Christina Pilkington and the County...

Councilmember Hooser: Could you speak up please? I cannot hear you.

Mr. Trask: Sure. Can you hear me? Can you hear me?

Councilmember Hooser: Yes.

Mr. Trask: Thank you. ES-762, this case involves a personnel dispute between former ADA Coordinator Christina Pilkington and the County of Kaua'i. There are no individual defendants named in the subject complaint either in their official and/or individual capacity. Instead, the complaint refers to an unnamed administrator. Plaintiff claims, in summary, that she was subject to wrongful and retaliatory termination and violation of public policy in violation of the Whistleblower Protection Act.

Councilmember Hooser: So, you said an unnamed administrator?

Mr. Trask: Correct.

Councilmember Hooser: And does that have to remain private?

Mr. Trask: No, it is not named in the complaint.

Councilmember Hooser: Oh, okay.

Mr. Trask: It just says administrator.

Councilmember Hooser: Okay. What office does this involve?

Mr. Trask: It is unnamed. It would be...well, there is not really an ADA office, but I do not know at this time, and I do not feel comfortable speculating.

Councilmember Hooser: So, we cannot ask where she was working?

Mr. Trask: She was the ADA Coordinator.

Councilmember Hooser: In what office was she housed?

Mr. Trask: I do not know. We have answered the complaint at this point and we have not done anything else.

Councilmember Hooser: Okay.

Council Chair Furfaro: Okay, let me make a housekeeping announcement here. It is very obvious to everyone in the audience that we are going to go into Executive Session. We will probably not be out of here until 12:30 p.m. We come back at 1:30 p.m. We are going to have a series of tax bills for public hearing. I just want to let you folks know that now for your management of your time for those of you that are in the audience. Mr. Hooser.

Councilmember Hooser: Okay. I am moving along here. There is just a long list of these complaints that we have to deal with and potentially a whole lot of money here on the table. ES-763. You want us to approve Special Counsel to represent the County of Kaua'i in an Equal Employment Opportunity Commission (EEOC) charge, which is the United States Equal Employment Opportunity Commission charge, and related matters. It does not say what Department, it does not say what the charge is.

Mr. Trask: So, on that, again, for the record, First Deputy County Attorney, Mauna Kea Trask. This is an EEOC case. So, it is not a Federal or State litigation type case like the Pilkington complaint is. So, EEOC has very strict rules regarding confidentiality, but I can say that at this point, all we did was receive a notice of complaint. I will not state in public on the open floor who it pertains to. We can talk about that in Executive Session, but we do not know the substance of the complaint. We just received a notice at this time.

Councilmember Hooser: So, the Federal EEOC has lodged a complaint against the County of Kaua'i?

Mr. Trask: No.

Councilmember Hooser: No? Okay.

Mr. Trask: No, we have received notice from the EEOC that a complaint has been filed against us, but we do not know the substance of the complaint.

Councilmember Hooser: So, an employee of the County of Kaua'i has lodged a complaint against the County of Kaua'i. Is that correct? I am just trying to get clear so that the public and I understand.

Mr. Trask: All I can say at this time, and let me just...if I can couch this real briefly. I would like to cite a State statute on this one. So, as you all know, the Open Records Law, the Public Records Law is codified in Hawai'i Revised Statutes (HRS) 92F. It generally states that government records are subject to public disclosure, public scrutiny, and et cetera. There are exceptions however. Exceptions are elucidated in HRS 92F-13, "government records exceptions to general rule. This part shall not require disclosure of: 1) government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Under HRS 92F-14, "significant privacy interests; examples. (a) Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual. (b) The following are examples of information in which the individual has a significant privacy interest." This is "information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position." Let

us see. "Except (B) the following information related to employment misconduct that results in an employee's suspension or discharge" and then we go through it.

So, at this point, I would say under the Hawai'i Records Law, personnel matters are treated as an exception. Under these exceptions, I do not think, and our office does not think, that we have reached that point, essentially the final arbiter has rendered a decision in this matter to render it public. So, again, it is not that we are trying to hide the information. If we do release this information, we would be exposing the County to liability. We are happy to discuss it with you in the back, and after we discuss, we can talk about what if anything is public, but to do it now and to even get close to that line is ill advisable.

Mr. Castillo: Let me add. Again, Al Castillo, County Attorney. I know that maybe some of you have noticed that the status of which we are or the status of this complaint for which we are bringing to you in Executive Session is a little bit different because in this case, we have...I am trying to use my words correctly. We have just received notice. We have not received the complaint, but we have sufficient facts for you, which are very sensitive in nature. For us to come to you early in the case even before receiving the complaint, and it will become all apparent to you as soon as we get into Executive Session and we explain to you our duties and our obligations under this case. Thank you.

Council Chair Furfaro: Okay. I want to thank you for your comments as well as your two (2) Deputies to this point, especially as it relates to advising us on a few matters that we should be very attentive to. Members, I want to say that if we continue with this questioning for another eight (8) minutes, we will be forced to take a caption break. Mr. Hooser, I am going to give you the floor. Hopefully, you can finalize your pieces, and we have other members that have other questions.

Councilmember Hooser: Right. Thank you, Chair. I did make a separate request that was denied from the County Attorney's Office to have an agenda item to discuss, in general, the large amount of grievances being followed by County employees. We have not been able to do that, and given that they have given this long list of things that they are asking for money, I think it is appropriate, but I will try to move on. The one we were just speaking about, so all we have is a number. Can you at least tell us what Department that this complaint or...

Mr. Castillo: We cannot give you any more information on...

Councilmember Hooser: So, we have the number, is all the public has right now? Okay, I will move on. The next one, ES-764. It is six (6) different charges by the same Federal office, Equal Employment Opportunity Commission. Six (6) different ones. I am assuming this is six (6) different complaints all concerning the Kaua'i Police Department. Is that an accurate description of what these six (6) different numbers represent, six (6) different employees of the Kaua'i Police Department alleging something?

Mr. Jung: Deputy County Attorney, Ian Jung. Yes, you are correct. This is six (6) separate EEOC matters, which I did go on quite a lengthy discussion about these at the last open session trying to explain EEOC process. If you want me to redo that, I mean, I certainly can, but I believe it would

be a waste of time because people can just simply go back and take a look at those minutes. Again, this is an EEOC matter, where an employee filed a complaint with the EEOC, Equal Employment Opportunity Commission, and we are trying to resolve that complaint at this point.

Councilmember Hooser: Okay. Thank you. That is all I have for now. The money questions, we can come afterwards.

Council Chair Furfaro: When we come back from the session, Mr. Hooser, I can give you the floor again. Mr. Jung, thank you very much for reminding us that at a previous Executive Session you summarized for us the best to your ability in public. Mr. Bynum has the floor, and then we have Mr. Kagawa.

Councilmember Bynum: Thank you very much, Chair. I want to thank you for your patience with these questions because I think they are very appropriate and I think we should set a new norm here to just have a bullet point thing of what is public record. My questions are more about what are already public records. So, some of these are civil cases that have been filed in court. So, just using the first one as an example, the Lynell Tokuda vs. County of Kaua'i, that there is a complaint, right? That is a public, right? Any citizen can go to the court and read the complaint?

Mr. Castillo: That is correct.

Councilmember Bynum: And I think both of the attorneys did a great job of explaining what they are required by their ethics, that these are merely allegations. They have not been proven in a court of law just like a criminal complaint, correct? Somebody is making a complaint. So, the public can have access to these records. How does the public do that? If I wanted to get the complaint, I am a member of the public watching this, and I want to read what Lynell Tokuda is saying the County did wrong, where would I get that?

Mr. Trask: At the court.

Councilmember Bynum: At the court? So, is there a website, you can type in Lynell Tokuda, and you can download it?

Mr. Trask: Well, that is a Federal Court case. So, you go to the website of the United States District Court, District of Hawai'i, and you would click on the pacer system. Beyond that, I am not sure.

Councilmember Bynum: So, at this point, there the complaint is probably the extent of it, but as case proceeds, there might be other documents that get filed in court, right?

Mr. Castillo: That is correct.

Mr. Trask: That is correct.

Councilmember Bynum: Briefs and counter-briefs where the parties are making public arguments because things happen in court are public primarily, correct? So, I wanted to distinguish between these cases that the public can get access to, and I think what Mr. Hooser is saying and I agree with him, is let us have as a practice some bullet points from the complaint that are available so when we go

into Executive Session you can...like he said in a few words. This complaint alleges *x* and do the disclaimers. I like that idea. I think it is appropriate.

My next question has to do with the EEOC cases. So, just using the first one as a complaint, which all we know is a number, is there a public document associated with this at this point...

Mr. Trask: No.

Councilmember Bynum: ...at the EEOC or...

Mr. Castillo: No.

Councilmember Bynum: Are there any public documents related to this?

Mr. Jung: And we went over this at the last meeting as well, but the idea behind EEOC is they have a confidentiality provision within the Federal regulations on this. So, the Federal regulations on the policy that were submitted with those Federal regulations is that the EEOC complaints are confidential in and of themselves because you have to protect the complainant's interests in keeping matters private as well.

Councilmember Bynum: Right.

Mr. Jung: Because if the issue is resolved and the workplace issue is resolved, then you do not want the potential for further retaliation by other Departments or whatever for the name being now, right? So, there is a precedent on keeping these matters confidential.

Councilmember Bynum: And so at this point, the answer then is there is no public documents related to this that are available to the public?

Mr. Jung: Right, all EEOC matters remain confidential until there is a formal complaint filed with a court.

Councilmember Bynum: But in this instance, you could not even tell us what Department this involves, at this point?

Mr. Jung: We can identify the Department, but not the...once the charge is made, we can identify the Department, but until the charge is not made, then we do not have to identify the Department.

Councilmember Bynum: Because in the next EEOC matter that has six (6) different numbers, now, what I have learned is I can look at these numbers and know that this new one was filed in 2014 and these previous ones were filed in 2013. So, in this one we identify the Department. What is the difference between this one and that one that we can identify the Department publicly in these but not in the previous one?

Mr. Jung: There has been no complaint filed as of yet, just the notice has been issued.

Councilmember Bynum: So, EEOC has said, "Hey, we have a new complaint." Do they do that with every complaint they receive?

Mr. Jung: As far as I understand, they send the notices out first and the complaints will come thereafter.

Councilmember Bynum: So, anyone files a complaint against the County whether it is an employee or whoever, if it involves the EEOC, well, it probably will be an employee if it involves EEOC, right? They send us this notice?

Mr. Jung: They send us a notice and then the other documentation follows.

Councilmember Bynum: Okay. So, at some point when other documentation follows, is that public documentation? So, in this case, are there public documents related to these six (6)?

Mr. Jung: No. Again, all EEOC matters remain confidential...

Councilmember Bynum: Okay. So...

Mr. Jung: ...under...

Councilmember Bynum: Thank you.

Mr. Jung: ...Federal law.

Councilmember Bynum: There is no public documents?

Mr. Jung: Correct.

Councilmember Bynum: But retaliation is charged in both the civil case and the EEOC cases, right? So, can you explain to the public how does that happen that some have public charges and are filed in State Court and some similar matters are filed at EEOC and do not have public documents?

Council Chair Furfaro: Okay. I just need to interrupt here for a second. We are down two (2) minutes on the tape. So, I have other members with questions, and I also think some of this EEOC pieces you have shared with us before. So, if it does not become repetitive, can we have the guidelines in writing? Please answer Mr. Bynum's questions.

Mr. Trask: And real briefly, essentially what it comes down to is employment law historically has been a tricky area. So, a lot of administrative venues were created. You have grievances, you have Hawai'i Civil Rights Commission, EEOC, mediation, and all different kinds of things that exist in order to avoid court. So, usually you have an exhaust administrative remedies. We have to go through that first. Only after that is done if it is not resolved do you move into the civil case. So, all of these venues exist so as to avoid a civil suit whether in the State or Federal Court. So, while you are in those administrative proceedings like Mr. Jung said, they are not public.

Councilmember Bynum: Okay. So, it really is the complainant who makes the choice of how they proceed with their complaint. Is that a fair short answer?

Mr. Castillo: Well, Councilmember Bynum, this would be one aspect because in the EEOC realm it is confidential and it does not prevent the complainant or the plaintiff from additionally filing a lawsuit against the County of Kaua'i or individuals of the County of Kaua'i.

Councilmember Bynum: So, bear with me. I am almost done. I still do not understand why we can identify the Department in these...oh, because it is at a later stage?

Mr. Castillo: Yes.

Councilmember Bynum: Okay. Thank you.

Council Chair Furfaro: You are okay?

Councilmember Bynum: Yes.

Council Chair Furfaro: Mr. Kagawa.

Councilmember Kagawa: I kind of just want to go into Executive Session and move this forward. I remember a few items back where I was digging during the Executive Session item and I was warned by other members who are doing the same thing about divulging too much information or asking too much questions about personnel related issues. Peter, our staff attorney, even warned me about serious consequences if we go too far and hurt the County. So, I just want to make sure that we are warning everybody equally around here. Thank you.

Council Chair Furfaro: The point is well taken. Again, gentlemen, on the EEOC particulars that I am saying to you, give us some written guidelines about EEOC and the parameters, which we cannot breach. Secondly, please also know as I have shared with you, Al, if it gets to the point as our attorney you feel it would be inappropriate for you to add or expand, just tell us as so. Just tell us. Okay?

Mr. Castillo: Council Chair, in the future, and maybe I can set it up with you and meet later on and we can discuss to what extent do you want us when we come up with this again, and give you some bullet points. We will talk about that later. Thank you.

Council Chair Furfaro: Yes, and we can do that, but I am tired of coming here and having to wear and my stripped uniform.

Mr. Castillo: Okay.

Council Chair Furfaro: I am not a referee, okay? Many of these things you know go over to you, they also go under my signature, but let us get a standard down pat here because I still have to go to public comment and we are getting later and later. I think Mr. Kagawa's point is well taken because some of these things we have covered in previous meetings. So, on that note, I am going to see if there is public comment before I take a vote to go into Executive Session. Let

me ask a housekeeping item of the Clerk. If I decide right now that we will not go to lunch until 1:00 p.m. and we postpone the public hearing to 2:00 p.m., is that acceptable?

Mr. Watanabe: Sure.

Council Chair Furfaro: Okay. So, those of you in the audience here, we are twenty (20) minutes of 12:00 p.m. We have a series of Executive Sessions to go into. Yes, Mr. Kagawa.

Councilmember Kagawa: Another process question. So, I notice we have a lot of people for the Shoreline Setback Bill.

Council Chair Furfaro: Yes.

Councilmember Kagawa: Where does that fall in today's plans?

Council Chair Furfaro: It probably falls after we have completed Executive Session, after we have completed public hearings on the seven (7) tax bills, and then we will go to the Shoreline Setback Bill.

Councilmember Kagawa: Okay. So, it is probably after 2:30 p.m.?

Council Chair Furfaro: Sure. That was my earlier announcement and I saw Max leave and so forth.

Councilmember Kagawa: Okay.

Council Chair Furfaro: It is probably closer to 3:00 p.m.

Councilmember Kagawa: Thank you, Chair.

Council Chair Furfaro: Okay, I am going to let you folks step down. Okay, as it has been my practice to do a roll call before we go into Executive Session, is there anyone in the public that would like to testify on anything. I am sorry Glenn, your time is *pau*.

There being no one to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Do I have a motion to go into Executive Session?

Mr. Watanabe: We need a motion.

Councilmember Kagawa moved to convene in Executive Session for ES-758, ES-759, ES-760, ES-761, ES-762, ES-763, ES-764, and ES-765, seconded by Councilmember Yukimura.

Council Chair Furfaro: I would like to do a roll call vote on the Executive Session, and again, we will break for lunch at 1:00 p.m., and we are back for public hearing at 2:00 p.m.

The motion to convene in Executive Session for ES-758, ES-759, ES-760, ES-761, ES-762, ES-763, ES-764, and ES-765 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Mr. Watanabe: Seven (7) ayes.

Council Chair Furfaro: Seven (7) ayes to go into Executive Session.
Go right into the Chambers, please.

There being no objections, the Council recessed at 11:42 a.m. to convene in Executive Session.

The meeting was called back to order at 3:10 p.m., and proceeded as follows:

(Councilmember Yukimura was noted as not present.)

Council Chair Furfaro: We are back from our recess. We still have a series of Executive Sessions to deal with, but I am going to move towards the Shoreline Bill at this point. Depending, again, on the potential the amendments, I will take into consideration where we go from here. So, could you read the item, please?

There being no objections, Bill No. 2461, Draft 2 was taken out of order.

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk: Yes, Chair.
This is on page 4. Bills For Second Reading.

BILLS FOR SECOND READING:

Bill No. 2461, Draft 2 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (*Amendments to the Shoreline Setback Ordinance*): Councilmember Kagawa moved for adoption of Bill No. 2461, Draft 2 on second and final reading, and that it be transmitted to the Mayor for his approval.

Council Chair Furfaro: There is a motion to approve to get this active on the agenda. Can I get a second?

Councilmember Rapozo seconded the motion for adoption of Bill No. 2461, Draft 2 on second and final reading, and that it be transmitted to the Mayor for his approval.

Council Chair Furfaro: Second for discussion. Okay, we have left from the piece that has come to the full Council, one amended version that is posted accordingly. May I ask members, are there any additional amendments that would

like to be discussed in full Council? Okay, I have several. Taken that, I will recognize Mr. Kagawa first.

Councilmember Kagawa: Thank you.

Councilmember Kagawa moved to amend Bill No. 2461, Draft 2 as circulated, as shown in the Floor Amendment A, which is attached hereto and incorporated herein as Attachment 1.

Councilmember Kagawa: While it is going around, I will give you folks a chance to read it and please get some out to the public.

Council Chair Furfaro: Go right ahead. You have the floor then.

Councilmember Kagawa: Well, the current Bill requires owners of non-abutting properties to obtain a shoreline setback determination even though the property is not abutting the shoreline or not on the shoreline, excuse me. As an example, if you own property on the *mauka* side of Kūhiō Highway or Kaumuali'i Highway, like in Kekaha, and you are within five hundred fifty (550) feet of the shoreline, you would need to hire a surveyor to survey the property on the *makai* side of the highway to determine the setback for your property. Another example would be if you own property on the *mauka* side of a lot that abuts a shoreline. So, there is a lot in between your lot and you are within five hundred fifty (550) feet, you would still be required even though your neighbor has constructed a house and a wall between your property and the ocean.

(Councilmember Yukimura was noted as present.)

Councilmember Kagawa: Why would you need to obtain a setback determination under these circumstances? I think you have intended, I guess, outcomes of the Bill, but there are these unintended consequences when we do not clarify in particular cases such as these and remove them because it does not abut the shoreline. Therefore, it is not affected by immediate shoreline erosion and does not affect those that are on the shoreline. Requiring someone to obtain a shoreline setback determination for a non-abutting property does not give added protection to the owner of the property. So, that is my reasons for the amendment, and I am open to any questions.

Council Chair Furfaro: Is there questions for the Councilmember? It seems by a show of hands, I may have as many as four (4) amendments today. I guess at that number, I would like to refer to Mr. Kagawa's amendment as Amendment A. Could you just hand write that in? Amendment A.

Councilmember Kagawa: Thank you, Chair. Good idea, the Amendment A, and we will hold off for voting until later?

Council Chair Furfaro: Yes, I may decide to let this have time to be digested by all.

Councilmember Kagawa: Thank you.

Council Chair Furfaro: Mr. Rapozo.

Councilmember Rapozo: Thank you, Mr. Chair. I have more of a process question. Let me start off by apologizing for missing the last three (3) Committee Meetings for personal reasons. So, I feel bad because I know a lot of the work of this Bill has been done in my absence and I would commend the Committee and the Council for moving this forward. Having said that, I find myself basically not ready, and I take full responsibility for that. That is my issue, not the Council's or the Committee's. Just hearing you, and I was not going to say anything really. If the wish of this Council was to move forward today, then I would do my best and vote as best as I could. After hearing what you just said that here are four (4) amendments in addition to trying to digest what has already occurred, and it has always been the practice of this Council to do the work in the Committee, that I guess I would humbly request that if we have four (4) more amendments, that we consider at least discuss the option of sending it back to the Committee. I do not believe that there is any time constraint or a rush. So, that would be my humble request, and obviously if it is unfair for the Council because I was the absent one, so I will respect whatever the Council decides. Just for the record, I am obviously not prepared and would ask that we send this back to the Committee to fully discuss and vet out the new amendments. Thank you.

Council Chair Furfaro: Let me say what I just said one (1) more time. I have not seen the four (4) amendments. I saw four (4) raisings of hands. I would like to get all of the proposed amendments in front of the public today and based on what those amendments are, I have a choice of either deferring this for two (2) weeks with all of the amendments being digested and taking public comment then and/or send it back to Committee, but besides being in a working group, in the Committee, when I looked and asked Peter for the draft, I have to tell you, I am shocked at the amount of red lined items there are. So, I think we need the two (2) weeks anyways. I still have not seen all of the amendments. I only counted hands. I hope I responded to your question okay.

Councilmember Rapozo: Thank you, Mr. Chair.

Council Chair Furfaro: Mr. Bynum.

Councilmember Bynum: I just want to note for the record, that last week when we were in Committee we did entertain one of these amendments that will be discussed today. I asked for the Committee and the Chairs, should we move this forward to Council or not? I do not object moving it back to Committee and doing more work, and I think the advantage of that is we would, well, we would have one (1) week, but we could work on it in Committee and then it will be back in Council in two (2) weeks. I very much support what you are saying. Let us find out what the nature of these are and then have that discussion. I just wanted to say for Mr. Rapozo's benefit, that we did discuss keeping it in Committee last week, but I think we were unaware that there would be additional amendments beyond the one. So, thank you.

Council Chair Furfaro: Thank you for your comments. JoAnn.

Councilmember Yukimura: Yes, I have no objections to delaying action on the final Bill because I think I had mentioned to Ms. Diamond that if the Council was not ready, we should not move forward on it. So, through no fault of his own, Councilmember Rapozo has not been part of our discussions so I always want to make sure we are considering every Councilmember's needs and concerns. If we have four (4), which I did not expect either, but I am not surprised because you can always

amend the Bill until it finally passes. I am in favor of floating all of the amendments, especially for both Councilmembers and for the public's sake in being able to review these amendments. So, doing that today so there is enough notice to everyone. Then, probably putting it back in Committee so that we do not take up a lot of Council time to work on it.

Council Chair Furfaro: Well, it has never been a problem with taking Council time. I am seeing the Bill come to the floor and I thought we were down to maybe one (1) or two (2) amendments, but we are at four (4). I would think you do not want to rush it and have it next week already without people. I would think you would at least like two (2) weeks to digest those amendments.

Councilmember Yukimura: Well, which would put it then in the Council rather than the Committee.

Council Chair Furfaro: It is in the Council now.

Councilmember Yukimura: Right. I mean, it is up to you, Chair, but I know you have said in the past that we should do our work in Committee, and also, it is not like we have only been dealing with this Bill for one (1) or two (2) months. Most...

Council Chair Furfaro: I think it is close to a year.

Councilmember Yukimura: Most of the red lines are from the original Bill. This is a comparison of the amendments that have evolved over time, but many of them were in the original Bill in some form or shape. So, I think we could work on it in Committee. I think we are down to the key sticking points, so to speak. I think we are quite aware of the different issues surrounding them.

Council Chair Furfaro: Okay. I do want to point out to the staff that the Legal Analyst that has been assigned to this will be on vacation during the Committee period. So, whether it is two (2) weeks or not, but I think there is a lot of detail in this Bill that we would certainly want to have Peter's presence on. I do not mind because of that, to keep it at the full Council. I will call for the vote and if I have to yield to you folks wanting it back into the Committee, then that is fine, but I think we can move forward having it at the full Council. Mr. Kagawa.

Councilmember Kagawa: Thank you. Mr. Chair, your point is well taken. I mean, I think if any amendments or even if this Bill is going to be discussed, naturally, there may be some amendments, two (2) amendments, or new amendments, and I think it would be kind of unfair or not feasible to have Peter try and train another staff to get up to date on such a complicated Bill. So, I think if he is not here next week, then either deferring to the next Council or deferring to a Committee Meeting in three (3) weeks.

Council Chair Furfaro: I actually might defer it to a date when I know he is back from vacation.

Councilmember Kagawa: Yes, exactly. Thank you.

Council Chair Furfaro: But what I want to do today is I want to flush out all of the amendments and on that note, we are on recess for a tape change.

There being no objections, the Council recessed at 3:22 p.m.

The meeting was called back to order at 3:25 p.m., and proceeded as follows:

Council Chair Furfaro: Okay. So, this is where the Chairman would like to go. I would like to go and get all of the amendments flushed out today. If they get flushed out in the full Council, it would come back on the agenda on October 22nd when I have the Legal Analyst back from vacation, and Aida is here as the backup. That is my preference today. Let us get all of the amendments flushed out and then defer until October 22nd. May I ask, do we have an Amendment B? Okay, Mr. Chock, you go ahead. Let us label your first one, Amendment B.

Councilmember Chock moved to amend Bill No. 2461, Draft 2 as circulated, as shown in the Floor Amendment B, which is attached hereto and incorporated herein as Attachment 2, seconded by Councilmember Kagawa.

Councilmember Chock: Chair, I have actually, two (2) amendments.

Council Chair Furfaro: Okay, let us do it a "B" and "C" then.

Councilmember Chock: Okay. Thank you.

Councilmember Kagawa: Are we going to...

Councilmember Yukimura: Let us just circulate it, not amend it.

Council Chair Furfaro: We are circulating Amendment B.
Mr. Chock, you have the floor.

Councilmember Chock: Thank you. I believe the Amendment B that is coming around is what was very similar to what we had last week at Committee that did not pass regarding the removal of the bright line. So, I am in favor of keeping it in Council to broaden the discussion this week, and if we need to continue at a later date as well. So, this is Amendment B in front of you, which is removal of bracketed here.

Council Chair Furfaro: Councilmember Yukimura.

Councilmember Yukimura: Yes, thank you. So, just a clarification. This is basically the amendment you circulated in Committee?

Council Chair Furfaro: That is he just said.

Councilmember Chock: That is correct.

Councilmember Yukimura: There is no real significant change from last week?

Councilmember Chock: That is correct.

Councilmember Yukimura: Okay. Thank you.

Council Chair Furfaro: Okay. I am hoping staff, that there is an appropriate amount of copies available for people in the public because we are just

circulating these as they are right now. You also have the floor for an Amendment C.

Councilmember Chock: Great. Peter is passing around Amendment C, which is same Section, but different area referring to the Kaua'i Coastal Erosion Study, the removal of consideration of the Kaua'i Coastal Erosion Study.

Council Chair Furfaro: You have the floor. You can talk about this being circulated.

Councilmember Chock: So, we can walk through it. Again, the bracketed areas, which would be eliminated, "Lots included in the Kaua'i Coastal Erosion Study." You will find that throughout this first page that refers to the Kaua'i Coastal Erosion Study. Then if you turn to the second page or back side of the page. The highlighted area for "Lots not included in the Kaua'i Coastal Erosion Study, the annual coastal erosion rate is zero." Again, following the first page, all the way down to number 2, Section (d), removal of the Kaua'i Coastal Erosion Study.

Council Chair Furfaro: Questions for Mr. Chock? Okay. No questions? Question Councilmember Yukimura, for Mr. Chock?

Councilmember Yukimura: Yes. So, basically the intention of this amendment, I am asking, is to treat all lots like lots that are covered by the Kaua'i Coastal Erosion Study?

Councilmember Chock: That is correct.

Councilmember Yukimura: Okay. So, even though they are rocky shorelines et cetera, you would still use the same formula and minimums?

Councilmember Chock: Basically, yes.

Councilmember Yukimura: Okay. Thank you.

Council Chair Furfaro: Okay. Mr. Bynum, do you have an Amendment D? No? Somebody raised their hand as the fourth one. Was that you, JoAnn? Okay. We are going to reference this as Amendment D for circulation.

Councilmember Chock: Chair, can I make a comment?

Council Chair Furfaro: Sure, go ahead.

Councilmember Chock: Just for clarity on process, I think that the last two (2) amendments that were introduced, probably are more stringent, but if I was looking at what is being introduced, I am thinking that, and knowing that Councilmember Yukimura's is probably more of a smaller amendment than this taking out the bright line, we probably want to consider the last two (2) that were introduced first, which would lead us to the abutting amendment and then Councilmember Yukimura's. That was just how I am processing it in my head. I just wanted to clarify that.

Council Chair Furfaro: Okay. JoAnn.

Councilmember Yukimura: I hear Councilmember Chock suggesting a sequence of decision making on these amendments, and I believe if we look carefully at them, there probably is a logical sequence just like there is actually with the Real Property Tax Bills we are looking at. So, I think that is something we should look at, but we do not have to decide here today because we will not be making decisions. So...

Council Chair Furfaro: That is true, JoAnn, and I am not sure of the seven (7) members, whose logic I want to use.

Councilmember Yukimura: Your logic, Chair. You are the Chair.

Council Chair Furfaro: Okay. So, let us stay with what I put on. You are Amendment D.

Councilmember Yukimura: Yes. Thank you.

Council Chair Furfaro: He is Amendment B and Amendment C.

Councilmember Yukimura: Right.

Council Chair Furfaro: Kagawa is Amendment A. Let us move on.

Councilmember Yukimura: So, may I explain Amendment D?

Council Chair Furfaro: Yes, you have the floor.

Councilmember Yukimura: Amendment D is based on some input that I received yesterday or the day before from Sea Grant stating that we needed to pay some attention to the minimum shoreline setback in the case of a bright line exemption. So, this amendment would specify that the shoreline setback shall be sixty (60) feet rather than forty (40) feet. I want to ask Ms. Pap from Sea Grant to make that testimony available to everyone and submit it formally for the record today. It is good that we will all have time to digest the input. Also, in the testimony which is not embodied in Amendment D, is a suggestion which I would like to add to Amendment D, and I am grateful for the extra time now, stipulating that setbacks calculated on high cliffs above thirty (30) feet would be measured from the edge of a naturally stable cliff. That would just make it clear where the starting point would be and actually, would make more sense. It would make more sense because then you really would not need a shoreline certification. It would be the most logical places, which is at the edge of the cliff given the height from the ocean. So, we will all get to consider this, but just to put you all on notice that I will probably be adding that to this amendment to be ready at the time we next convene on this matter.

Council Chair Furfaro: Okay. So, be prepared for another amendment in the amendment. Mr. Bynum.

Councilmember Bynum: I just want to be clear, what is it that you are considering adding, Ms. Yukimura?

Councilmember Yukimura: I am considering adding the suggestion from Sea Grant that in measuring the starting point for a setback, that it be at the edge of a stable cliff.

Councilmember Bynum: Okay. Thank you.

Council Chair Furfaro: Now, I want to make sure everybody understands what I am doing. I want to flush everything out for people to digest this until the 22nd. I have to tell you, if we come back on the 22nd, and there is a whole slew more of amendments, then I am going to ask for a vote to send it back to Committee, okay? Have we flushed everything out? Mr. Bynum.

Councilmember Bynum: I just want to answer that question.

Council Chair Furfaro: Yes.

Councilmember Bynum: There is this red lined document that I have not seen until today.

Council Chair Furfaro: Yes.

Councilmember Bynum: I really thought that we would bring this Bill to a conclusion today, that the bright line would be the issue, but if we are going to have this additional time, I have been in dialogue about the activities issue that has been discussed here. The only reason I did not prepare an amendment related to that was because of time, was that without being able to do a more thorough analysis. So, because you asked the question, I might anticipate if this is enough time to introduce an amendment related to activities because I think it would take two (2) weeks or more to produce that amendments. That is why I was not going to introduce it today.

Council Chair Furfaro: Okay. Thank you for coming clear and getting it off your chest. I will entertain that on the 22nd of October. Is there any more here because we still have a full Council agenda here? Mr. Rapozo.

Councilmember Rapozo: Thank you, Mr. Chair.

Council Chair Furfaro: And will that be enough time for you to get current, going to October 22nd?

Councilmember Rapozo: Yes.

Council Chair Furfaro: Okay.

Councilmember Rapozo: I do not plan to go anywhere so I should be okay. I do have though, just a couple of questions if I could ask, I guess, Mike, to come up if you do not mind, Mr. Chair.

Council Chair Furfaro: Sure.

There being no objections, the rules were suspended.

Council Chair Furfaro: Mike, could you come up?

Councilmember Rapozo: And if this has been answered, just tell me Mike, and I will go look at the minutes. I do not want to have to rehash the discussion. This is just what glared out at me today when I looked at this red line.

I actually like the red lined document. I do not know who did it. I do not know if it was our staff that did it.

Councilmember Yukimura: Aida.

Councilmember Rapozo: Aida?

Council Chair Furfaro: Aida did it.

Councilmember Rapozo: I actually like the red line. It is a lot easier than the Ramseyer. This is so much easier, but on page 1...oh, you have a copy?

MICHAEL A. DAHILIG, Director of Planning: Let me grab a copy.

Councilmember Rapozo: This is actually a question. This is in Section 8-17.1 Applicability, Section (b) where it says "where structure and/or prohibited activates are proposed within approximately five hundred fifty (550) feet of the shoreline."

Mr. Dahilig: Yes.

Councilmember Rapozo: Why "approximately"? That jumped out at me because I can remember being a police officer on the stand and in your report you put in "approximately," and that was just hell. The defense attorneys had a field day with that.

Mr. Dahilig: Right.

Councilmember Rapozo: What is "approximately"? Is five hundred forty-nine (549), is five hundred fifty-one (551)? Why would we go with "approximately" and not set that?

Mr. Dahilig: Thank you for the question, Councilmember Rapozo. Just for the record, Mike Dahilig, Director of Planning. Before I answer the question, I just wanted to also apologize for my attire. My office is dealing with a crisis.

Councilmember Rapozo: Oh, I thought you were talking about using the University of Hawai'i (UH) shirt.

Mr. Dahilig: Sorry, I do not mean to disrespect by coming in slippers and shorts before this body.

Council Chair Furfaro: You mean your air conditioner is out?

Mr. Dahilig: Yes, it has been out.

Council Chair Furfaro: Okay.

Mr. Dahilig: It is like one hundred something degrees in the office right now. So, I just want to apologize. No disrespect in my decorum here. There are two (2) reasons why we are looking at the word "approximately." One is that there is an issue concerning the ability to obtain rights of entry into a

landowner's property. So, for instance, if you had something like a forty (40) foot lot, a very narrow lot, and then you had an adjacent lot that was coming in for construction, the person that is on the lot that is abutting the shoreline may not want to have their shoreline certified by the State. So, this was meant to accommodate for those circumstances where we know that clearly there is going to be shoreline affects decades down the line, but we need to be able to identify, I guess, an area of scrutiny. So, that is one reasons why there is "approximately." Secondly, is because we also have again, this issue of the shoreline certifications are only good for a certain amount of time and they get stale after a while. So, using that phrase "approximately" from the shoreline is meant to aid the accuracy of our Department in using our pictometry system which is a GIS based system for us to essentially measure the amount of footage from where we see the shoreline approximately delineated. So, shoreline is a loaded word because of State law. It is only something that Department of Land and Natural Resources (DLNR) can prescribe. So, almost from a cautionary standpoint, we have used the phrase "approximately" for that reason.

Councilmember Rapozo: And you feel comfortable that if we need to enforced this and go to court, that it would stand up?

Mr. Dahilig: It would in the sense that we, at this juncture, would only have applicability as a first civ and so the actual application of the law where we are starting to actually start drawing lines and regulate, would come in as a consequence of the actual shoreline certification being done by the State, and therefore, we would be covered. So, this is meant just as a trigger for the second degree of scrutiny.

Councilmember Rapozo: Okay. Thank you. Then the second question, if I may, Mr. Chair? Page 19. The world famous after-the-fact permit. I do not know. I guess early on in the discussion, maybe it was even in a discussion before in a former task force or group, that we were going to do away with the after-that-fact permits, that in fact, we were not going to allow that. I guess a couple of questions, and I will have more I am assuming at the next meeting, but we are allowing people, and I understand when you apply for a variance. You have a lot, you have some issues, you have some geographical issue with the lot, but you need to come in and apply for a variance. So, you come in and you apply for the variance. You pay three hundred dollars (\$300), right? That is how it is right now?

Mr. Dahilig: Right.

Councilmember Rapozo: Then, if you already have the structure you decided to build the structure without any permits, it goes to seven thousand five hundred dollars (\$7,500). I remember being told on this Council when we were trying to draft legislation for fees, that you could only charge a fee that would have a nexus to the cost to process that application. I do not understand the difference. I mean, that is seven thousand two hundred dollars (\$7,200) because someone had already built the structure. That is a concern only because I do not know if it is legal or not. The bigger concern I have is why we are even allowing that person to continue on simply because they have seven thousand five hundred dollars (\$7,500). I think the cost to build...let us say you came through the normal course and you applied for your variance and the Planning Department put all of these conditions or whatever. I do not know. It might be a cheaper incentive to just build it without the permits. Also, the fact that they have already built the structure without permits, do they get penalized for violating the law to build it without permits? I do

not think that happens. I mean, I think they build a structure, they come in, they apply for the after-the-fact, they pay the money because they can, and then they get the permit, and yet, we kind of forget about the original violation of building those structures without a permit. So, number one, I do not want that in there. I do know if I can get the support of this body. I do not think we should be granting after-the-fact permits, definitely not in the Special Management Area (SMA) or a coastal protection area. So, I am just curious what is the rationale because that would be one amendment, Mr. Chair, that I would probably be introducing at the next meetings, is the removal of that after-the-fact permit clause because I cannot support that.

Mr. Dahilig: Right. To answer your question, Councilmember, there are two (2) fees that our Department can seek approval from this body to, I guess, charge. One is an administrative fee as you see in this particular circumstance. The other one is a regulatory fee, which is a fee to compel an action. So, in this case, it is clear that we are charging an administrative fee which is what you alluded to in the conversation earlier, that it must be in lieu of a service that is being provided by the County for whatever is being paid for. In this particular circumstance, the difference between coming in for a shoreline determination before a structure is built and coming in for a shoreline determination after the structure is built is that. It is very involved in the sense that we are trying to back fill, with the cooperation of DLNR, the ability to actually ascertain the shoreline once a structure is actually in place. So, the fee is meant to reflect the really high escalation in cost because we are essentially chasing down a violation versus having somebody coming in with no structure in the first place because right now, we are destroying a line versus in an after-the-fact permit situation, it is now incumbent upon the structure. We have to verify that structure and we have to go to DLNR and do a number of checks and balances. So, that, I believe, we can justify this from a departmental standpoint, but in terms of an actual policy question whether we should be doing after-the-fact permits or not, I think that question needs to be answered in tandem with this because if we are allowed to do after-the-fact permits in the rest of Chapter 8, the ability to do or not do shoreline certifications and shoreline setback determinations will have a direct consequence whether we can even process those things by policy. So, those things, you are right, have to go kind of hand in hand. Certainly, if this was left in the Bill and through further Ordinance amendment, after-the-fact permitting was stricken from the authority of the Department at this point, then this would actually become moot because we would not be able to actually issue a permit for an after-the-fact structure and also issue a shoreline determination. I do not know if I am starting to ramble on here.

Councilmember Rapozo: Well, I do not know...

Council Chair Furfaro: I do want to caution us on something. This is something you are proposing to do and there is nothing formal on the table...

Councilmember Yukimura: It is already in here.

Council Chair Furfaro: So, this piece is in the form of an amendment that you want to remove, right?

Councilmember Rapozo: Correct.

Council Chair Furfaro: Right. So, I just want to say that the discussion is fine, but we do not have that amendment to remove.

Councilmember Rapozo: No, I am just, and I wanted to know what the rationale for...

Councilmember Yukimura: Page 24.

Councilmember Rapozo: Page 24?

Councilmember Yukimura: May I Chair?

Councilmember Rapozo: Please help me. I am looking at the red line version.

Council Chair Furfaro: Yes. I will...

Councilmember Rapozo: Which is what I believe...

Councilmember Yukimura: The red line...

Council Chair Furfaro: Excuse me.

Councilmember Yukimura: Sorry.

Council Chair Furfaro: Excuse me. I will ask Mr. Rapozo if I can defer your question to Councilmember Yukimura.

Councilmember Rapozo: Yes. I am reading from the red line version.

Council Chair Furfaro: Yes.

Councilmember Rapozo: Which I believe is on the table today.

Council Chair Furfaro: Yes.

Councilmember Yukimura: That is what I am referring to also.

Councilmember Rapozo: Okay.

Mr. Dahilig: I do want to clarify also...

Council Chair Furfaro: Hold on, Mike.

Mr. Dahilig: Sorry.

Council Chair Furfaro: I am recognizing Councilmember Yukimura.

Councilmember Rapozo: Help me, JoAnn.

Councilmember Yukimura: On page...

Council Chair Furfaro: Councilmember Yukimura, you have the floor.

Councilmember Yukimura: Thank you, Chair. So, the red line version actually, the red are the deleted Sections, but there are black underlines, which are the additions. On page 24 is the Rapozo amendment, which I names when I was briefing everybody o these amendments. Page 24, the second to the last underline. "In no case shall the Commission grant a shoreline setback variance for structures constructed without valid permits."

Councilmember Rapozo: Okay.

Councilmember Yukimura: And that is a suggestion you made early on.

Councilmember Rapozo: Yes.

Councilmember Yukimura: And we adopted, I think in Draft 1. It should be in there, if I recall. There was, seemed like unanimous approval, and I believe the Planning Director said he was okay with it. So, it is there or at least if the wording needs to be changed, the intention is there.

Councilmember Rapozo: Well, it is conflicting with page 19.

Councilmember Yukimura: Well, as Mike said, and maybe it needs to be made consistent, but it is moot. The issue of fees is moot if it is not possible to give out a variance.

Councilmember Rapozo: Right.

Council Chair Furfaro: Okay, and I am going to hold her on that because Mike wanted to speak on this, Mr. Rapozo, and then I am going to give you the floor again.

Councilmember Rapozo: Thank you.

Council Chair Furfaro: Mike, your comments on this please.

Mr. Dahilig: Just as a final kind of background on this. This fee of seven thousand five hundred dollars (\$7,500) is existing law at this juncture. So, there is that higher administrative fee for the more involved processing that is already by law, required on our Department if a variance was to come through.

Council Chair Furfaro: Okay. You still have the floor.

Councilmember Rapozo: Thank you, Mr. Chair. So, Mike, page 24 item...oh, that is a typo too. It should be...no. I am sorry. It is a (j). "In no case shall the Commission grant a shoreline setback variance for structures constructed without valid permits." Well, they would have a permit. It would just be a...well, it would not because you would have to apply for the variance first. So, that is kind of a...one needs to go.

Mr. Dahilig: There is a circular...I can see.

Councilmember Rapozo: It is not even circular. This is not circular. It is right into the wall. It does not continue. If this thing passes, (j) says you

cannot and (i) says you can or one says you can if you can afford it. So, one needs to go.

Mr. Dahilig: And we are stuck on a conflict of law situation.

Councilmember Rapozo: Well, we will take care of the conflict. Mr. Chair, that will be my amendment that staff could note. Just remove in item 1, the seven thousand five hundred dollar (\$7,500) and let us stick with the (j). I like that. Thank you, JoAnn, for calling it the "Rapozo amendment" because I thought that was already done.

Councilmember Yukimura: It was.

Councilmember Rapozo: So, Mr. Chair, if we could just ask staff to prepare an amendment for the next meeting that would remove the reference to an after-the-fact permit fee of seven thousand five hundred dollars (\$7,500), and we will focus on (j), which would be no more after-the-fact permits. I mean, if somebody builds without a permit, Mike, in the shoreline setback area, in an area that they should never have built, they should have gotten a shoreline determination, that they wanted to cheat the system, we need to enforce the law on them. We need to make them tear down that structure and have them start all over.

(Councilmember Kagawa was noted as not present.)

Councilmember Rapozo: And then much more than a seven thousand five hundred dollars (\$7,500) application fee. There needs to be a fine. The ten thousand dollars (\$10,000) a day fine that we passed, maybe we give a few days of those. Do you know what I am saying?

Mr. Dahilig: Okay.

Councilmember Rapozo: And then have them go back to square one because this creates an incentive to the builder to build without a permit because then he knows all he has to do is pay the seven thousand five hundred dollars (\$7,500). Now, conversely, the person that does not have seven thousand five hundred dollars (\$7,500), he gets screwed. He will be punished for the illegal structure, right?

Mr. Dahilig: I have no reason do disagree.

Councilmember Rapozo: I mean, he will be punished because he cannot afford to pay off the Planning Department to give him a damn after-the-fact permit. So, let us take away after-the-fact permits, everybody play by the rules, and that is how we work.

Mr. Dahilig: And just to be clear, that pay off, we would deposit in the General Fund.

Councilmember Rapozo: Correct.

Mr. Dahilig: Just to be clear.

Councilmember Rapozo: Again, we are not in this money grabbing situation.

Mr. Dahilig: I understand.

Councilmember Rapozo: We are trying to protect the shoreline with this Bill.

Mr. Dahilig: Yes.

Councilmember Rapozo: We are not trying to raise money. Thank you.

Council Chair Furfaro: Okay, let me make sure I am summarizing what is going on here so that everybody understands given a chance, we have the four (4) floated amendments: A, B, C, and D; we have Mr. Bynum who has given us notice on him wanting to do his activities piece; and then we have Mr. Rapozo who is going to deal with removing the conflict there in (j). That is where we are at. I want to continue making sure everybody understands in fair play where we get my October 22nd. Mr. Bynum.

Councilmember Bynum: I just wanted to follow-up with something Mr. Rapozo said. You referenced ten thousand dollar (\$10,000) day fines. That is a different Bill, not in this Bill?

Councilmember Rapozo: I believe the ten thousand dollars (\$10,000)...did we not put it in a Section that applies to all violations?

Mr. Dahilig: We have authorization in the law to go up to ten thousand dollars (\$10,000) under the Comprehensive Zoning Ordinance (CZO).

Councilmember Rapozo: Correct.

Mr. Dahilig: And up to one hundred thousand dollars (\$100,000) under Chapter 205A.

Councilmember Rapozo: Right, but the ten thousand dollars (\$10,000) a day fine we passed in this Council applies to this?

Mr. Dahilig: Yes. It is authorized under Chapter 46-1.5.

Councilmember Rapozo: Thank you.

Council Chair Furfaro: Yes. Okay?

Councilmember Bynum: Thank you.

Council Chair Furfaro: Mike, I am going to excuse you now.

Mr. Dahilig: Thank you, Mr. Chair.

Council Chair Furfaro: We have a bunch...you want another question?

Councilmember Chock: Just one (1) more.

Council Chair Furfaro: Okay, one (1) more, Mike, because we have a bunch of business yet to take care of here.

Councilmember Chock: Thank you, Chair. Just a real quick because what I am hearing is that we are headed towards addressing some of the activities questions. I guess my request in preparation would be to, because really, what we have been trying to go back to is where it sits in the CZO and SMA, if we could prepare for that and be able to actually look at where it sits and how specifically by the next time we are together.

Mr. Dahilig: Okay.

Councilmember Chock: I would appreciate it. Thank you.

Council Chair Furfaro: Now understand those pieces, we have had this discussion before. Those kinds of activities are governed by other rules in the CZO, in the SMA, how long you can keep a sign up, moving non-pertinent fixtures for a wedding or so forth, but we will be visiting that again. Anymore? Mike, you are excused, and you are welcomed to stay over here or even use my office as long as the air conditioner is working here.

Mr. Dahilig: Thank you, Mr. Chair.

Council Chair Furfaro: Now, to the public, I want to make sure you folks understand. I am going to give you all time to give us testimony. We have a full calendar yet, the Council does. We have A, B, C, D, E, and F in the way of amendments. You can comment on those, but they have not formally been introduced. They have been floated only for discussion. Barbara, you can come up if you would like.

Ms. Fountain-Tanigawa: Chair, we do have registered speakers.

Council Chair Furfaro: Oh, I am sorry, Barbara.

Ms. Fountain-Tanigawa: No, no, and Ms. Robeson is the first registered speaker.

Council Chair Furfaro: Oh, she is the first registered speaker?

Ms. Fountain-Tanigawa: She is, yes.

Council Chair Furfaro: Okay. You are on the top of the list again. Go ahead.

BARBARA ROBESON: Thank you, Mr. Chair and Councilmembers. I am not testifying on those amendments. Last night, I was prepared to testify on the Draft 2, which was the version that was available to the general public. Then, as you know when we all got here this morning, we were provided with a pretty fabulous red lined document that coordinated the existing CZO Ordinance No. 887 and the proposed amendments up to that date. So, my suggestion is...or I hope that this red lined document is now Draft 3, and that would be provided to the general public online so that from now on, we can use that red lined document for future

comments or testimony or whatever. That is all I had to say. I am throwing away my testimony already from yesterday.

Council Chair Furfaro: I think that is an excellent recommendation, and I think that is the direction we will go.

Ms. Robeson: Thank you very much.

Council Chair Furfaro: Next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Carl Imparato, followed by Caren Diamond.

CARL IMPARATO: Aloha Councilmembers. My name is Carl Imparato. I am speaking today on behalf of the Kaua'i group of the Sierra Club. We submitted written testimony on this Bill. It is all germane, but given the way things are moving here in terms of going back to Committee on this, I will just summarize what I think is important to say today. It has been impossible for us or for any member of the public to provide complete testimony about what is wrong with this Bill because the Council has only this morning, produced the document that directly compares what is on the floor with that is currently in that law.

(Councilmember Kagawa was noted as present.)

Mr. Imparato: And that is a tremendous step forward, and I appreciate Council Services for having done that. Nonetheless, there are some glaring and disputable problems that really concern us, and I would like to touch on them. First of all, this Bill would exempt shoreline development that is thirty (30) feet above so called rocky shorelines and outside the flood zones from the rules that require setback determinations and even shoreline certifications. Number 2, the Bill would exempt properties along shorelines that have not even had coastal erosion studies from everything but the most minimal setback requirements. Number 3, the Bill would exempt from the existing shoreline setback regulatory framework, the entire category of activities that are currently subject to the rules. That meant that if you voted for this Bill as is, you would be voting to cut the existing setback requirements for large parcels on rocky bluffs throughout Kaua'i and on parcels where there was no coastal erosion survey done by sixty percent (60%) or more, and that would create great harm.

I would like to talk to the issue of the protection of public views and the visual beauty of Kaua'i's coastal areas because people have claimed in past meetings that these issues are protected by other zoning regulations, and that is just wrong. There is no concrete view plain protection in the County's SMA rules. Here is an example of the weak language that is in the SMA rules. "The Director or the Planning Commission shall seek to minimize where reasonable development that would substantially interfere with or detract from existing public views to and along the shoreline." That is it. That language has been proven to have no value whatsoever in protecting places like Keālia where the Sierra Club had to sue to get the setbacks that we have today. As we go to the CZO, the only place in the CZO where there is any reference to protecting views is in existing Article XXVII. That is precisely the Article that Bill No. 2461 is intending to gut in certain places by eliminating the existing one hundred (100) foot setback requirement for large lots. That is precisely the Article that some Councilmembers want to transform from what it is today, shoreline setback and coastal protection, to addressing only...

Ms. Fountain-Tanigawa: Three (3) minutes.

Mr. Imparato: ...coastal erosion.

Council Chair Furfaro: Carl, that is three (3) minutes. I will give you your other three (3) minutes.

Mr. Imparato: Thank you. Finally, I believe it does not make any sense to say that the Council should pass this Bill now and deal with view plain protection issues later because passing this Bill as is would create a window of months or years during which projects are going to be coming into the County and they would be approved only with the weakened shoreline protections. We are all smart enough to know that by the time if ever a view plain protection ordinance would see the light of day. Pierre Omidyar's Hanalei Ridge Transient Vacation Rental (TVR) project which would line ridge above Hanalei River with dozens of TVRs. That project has been waiting in the wings for this forty percent (40%) to sixty percent (60%) reductions in setback requirements that will be proposed subject to only the reduced requirements and then all we can do is say, "Well, it is too bad we could not do anything about it. We will deal with it next time." So, in conclusion, I am glad that the Council is going to allow time to study the red line of the current draft of the Bill versus the CZO and then undertake detailed deliberations.

In terms of the amendments that have been proposed, having seen Councilmember Kagawa's amendments today, I am not sure about the details, but I think the issue raise is a legitimate one. So, no comment on the detailed solution, but it seems like a legitimate issue. The two (2) amendments proposed by Councilmember Chock, which would eliminate the bright line exemption from bluff properties and eliminate the special treatment for properties not in the erosion studies, those are very, very positive amendments. As to Councilmember Yukimura's amendment, I think it would be a moot one given the removal of the bright line exemption. Councilmember Bynum's proposal to look at activities is, I think a very important one, and look forward to seeing what the details of that will be. Finally, Councilmember Rapozo's proposal to eliminate the after-the-fact permitting is definitely a positive. So, I thank you for your time today, and look forward to the detailed discussions that will come up in the future.

Council Chair Furfaro: Carl, I have something for you. I was very bothered that there would be testimony that implied as the Council Chair, I rushed through this. As you know, I have just given you folks almost four (4) weeks to review this. This is my first handling it, but there was written testimony that implied that by coming to the full Council, we were rushing it. I am trying to get everything flushed out, and in fact, I just want to get confirmation from you folks that I had my staff call you last week to make sure whatever amendments were available were also posted and available to you. Could I just get a confirmation that they may have called you?

Mr. Imparato: On Sunday I received a copy of the revise Bill.

Council Chair Furfaro: Yes.

Mr. Imparato: The Draft 2. Scott, from Council Services informed us that it was available. So, I sent an E-mail back saying I appreciated that.

Council Chair Furfaro: Thank you.

Mr. Imparato: So, that was done.

Council Chair Furfaro: Thank you.

Councilmember Rapozo: I have a question, Mr. Chair.

Council Chair Furfaro: Yes.

Councilmember Rapozo: Page 2 of your testimony, you said Sierra Club sued to get greater setbacks. What case was that?

Mr. Imparato: That was associated with the development at Keālia, and I believe that Judy Dalton who was part of that effort, plans to speak on that. So, she can give you more details.

Councilmember Rapozo: I am just curious. I would like to see the case on that. Just one (1) more question, and this pertains to the rocky shoreline. So, it is your position that if the property is on the rocky shoreline and the erosion rate is zero (0), which is basically what...that they would not be exempt from doing a shoreline certification?

Mr. Imparato: Correct, and one of the major reasons for that is that even if it is on a rocky shoreline, it is supposed to have a forty (40) foot or a sixty (60) foot setback, and that begs the question, setback from where? So, without a shoreline certification, I mean, it is easy to think of the fact of a situation where you have the ocean coming up to a straight cliff and then you are up here. So, then you know you go forty (40) feet back from the cliff.

Councilmember Rapozo: Right.

Mr. Imparato: But the reality is that you are often going to have some land below, you have a bluff that maybe not go up ninety (90) degrees. So, then we talk about forty (40) foot setback from where? Is it from someplace down at the base that the developer is going to say, "It is much more *makai*" or is it going to be from somewhere halfway up the slope. So, it begs the question when you say that there is no shoreline certification, but there is a setback requirement. How do you measure that setback? I would argue that you need to do a shoreline certification because that is the only process that exists where the public gets to participate in the certification itself rather than have to sue the County afterwards to say, "The Planning Director decided that here the line was," and then we have to go through a litigation kind of process. I think from a perspective of being a developer, one would actually prefer to spend the three thousand dollars (\$3,000) or four thousand dollars (\$4,000), whatever it is for the certification rather than have to deal with a lawsuit afterwards saying that the arbitrary determination was not what the public would believe was reasonable.

Councilmember Rapozo: Okay. I guess I would assume that you would measure the setback from the non-erodible point, from that point that is not

subject to erosion. That is where your mark would start, but maybe that is not defined in the Bill.

Mr. Imparato: I do not believe it is, but there is also the question that it may be very legitimate that before you even get to that rocky shoreline, you have some non-erodable beach and the high wash of the wave does not come all the way up to there.

Councilmember Rapozo: But imagine if you are looking at it from the side and let us say your shoreline's determination, and let us say the rocky shoreline or the rocky cliff is on a gradual incline. If you measure from where you believe the shoreline is forty (40) feet, the actual buildable area might be further than forty (40) feet, meaning they could build right up to the cliff.

Mr. Imparato: I mean, that could be.

Councilmember Rapozo: I mean, right up to the cliff and have no setback because of the grade of the cliff. So, as opposed to marking it at the non-erodable area, then they would have forty (40) feet minimum.

Mr. Imparato: Well, that begs the question because what you are discussing now, I do not believe is anywhere in this. So, it is just...

Councilmember Rapozo: No, it is not, and that is what I am saying. Maybe it needs to be defined.

Mr. Imparato: Possibly so, and then I would also argue that as to whether it is forty (40) feet again, currently for a lot that is greater than two hundred (200) deep, the setback is one hundred (100) feet.

Councilmember Rapozo: Right.

Mr. Imparato: I see no reason why it should be brought back to forty (40).

Councilmember Rapozo: Okay. Thank you.

Council Chair Furfaro: JoAnn.

Councilmember Yukimura: So, Carl, you seem to be implying that for lots not covered by the shoreline coastal study, that is exempt.

Mr. Imparato: No, what I am saying, the lots that are not covered by the coastal shoreline study, there is the extra language in Section 8-27.3 that says, these lots that were not covered only have forty (40) to sixty (60) foot setbacks depending on whether they are in front of, I forget the exact language, rocky shorelines or not. So, there are two (2) issues in Section 8-27.3. There is the bright line exemption and there is the properties that were not covered by the coastal erosion study where they may not even be elevated. They may be right on the ground. Those ones, this Bill says, if you have a two hundred (200) foot deep property that has not had a coastal erosion study done in front of it, instead of having the existing one hundred (100) foot setback that the existing law requires, it would only have a forty (40) or sixty (60) foot setback.

Councilmember Yukimura: That is not correct. The average lot depth formula will apply.

Council Chair Furfaro: Okay, I am going to share with you folks, if you folks disagree on the terminology and the verbiage here, this thing is coming back on the 22nd. You can have this conversation offline.

Councilmember Yukimura: That is true.

Council Chair Furfaro: Okay. Mr. Bynum.

Councilmember Bynum: Mr. Imparato's testimony brings up questions I want to ask the Planning Department about.

Council Chair Furfaro: Okay, but remember, this Bill is coming back and...

Councilmember Bynum: Right, and maybe I will do that offline. I do not have any questions for him.

Council Chair Furfaro: If you could do that offline, I would appreciate it because none of the amendments have formally been introduced.

Councilmember Bynum: Right. So, I do not have any questions for Mr. Imparato at this time.

Council Chair Furfaro: It was just for flushing everything out.

Councilmember Bynum: Just, thank you for your testimony.

Council Chair Furfaro: JoAnn.

Councilmember Yukimura: So, no need to answer today, but I guess my question is, what criteria should we use to protect aesthetics, and do not need to answer it. It is inherent when your...

Council Chair Furfaro: Your microphone is not on, JoAnn.

Councilmember Yukimura: Sorry. It is inherent in your proposal. So, if you might think about that so you can make suggestions.

Mr. Imparato: Right.

Councilmember Yukimura: Thank you.

Mr. Imparato: And I think it is a major, major question. It is not an easy one and the primary issue that we are raising is let us not decrease the existing protections while we try to figure out how to increase them in the future.

Councilmember Yukimura: well, it may be questionable to regulate aesthetics with coastal erosion setbacks. So, okay, let us talk about it later.

Mr. Imparato: Fair enough. I think Article XXVII is about more than coastal erosion. Caren Diamond who is supposed to be the next speaker had to leave. She could not stay this afternoon. So, she is not on the list.

Council Chair Furfaro: Okay. Caren Diamond is not available. The next signed up speaker.

Ms. Fountain-Tanigawa: The next speaker is Judy Dalton.

Council Chair Furfaro: Again, I want to remind people that this Bill is coming back on October 22nd, and we have several Executive Session yet to go, as well as Legal Documents.

JUDY DALTON: *Aloha* Councilmembers. My name is Judy Dalton for the record. I think it is important at this time to provide some history of shoreline preservation that is very relevant to this Bill. From 1997 to 1998 the Sierra Club was involved in a seven (7) month long struggle to prevent Keālia Plantation from building so-called farm dwellings as close as thirty (30) feet from the bluff of the wild and scenic coastline at Kumukumu, also known as Donkey Beach. To protect Kumukumu from the visual intrusion of houses being built so close to the ridge above the beach, the Sierra Club former Friends of Donkey Beach whose members came out by the dozens to testify before the Planning Commission for several months in an attempt to have the building footprint set further back. The Planning Commission ignored public testimony and instead approved of the development with minimal setbacks. Friends of Donkey Beach was forced to file a lawsuit against the County of Kaua'i and the County Planning Commission to uphold Hawai'i Revised Statutes 205A, which states as its policy to protect scenic and open space resources "to ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural land forms and existing public views to and along the shoreline." In the end, it was only because of the lawsuit that the developer agreed to set the houses back further, in some cases more than one hundred (100) feet from the bluff line. The non-binding language in the County's SMA's rules was ignored by the Planning Commission. It was useless for protecting the public interest. This history highlights the fact that Planning Commissions have and will capriciously ignore their responsibility to protect the public trust. We cannot base protection of our scenic view plains and our natural resources on weak qualitative verbiage that can be ignored by whomever may happen to be on the Planning Commission. We cannot risk another unabashed disregard for the value of our natural resources. Since the time of the Keālia event, the CZO has been amended by the existing shoreline setback and coastal protection language in Article XXVIII of the CZO to require at least a one hundred (100) foot setback of deep shoreline lots. That setback requirement may be insufficient in many cases to protect the public's scenic coastal resources, but at least it is a start and at least it is a firm binding requirement that cannot be ignored...

Ms. Fountain-Tanigawa: Three (3) minutes.

Ms. Dalton: ...by the Planning Department and the Planning Commission.

Council Chair Furfaro: Judy, that is your three (3) minutes. I will give you your additional three (3) minutes.

Ms. Dalton: Thank you, Chair. Reducing a requirement to forty (40) feet as Bill No. 2461 would do, would be a tremendous leap in the wrong direction. Such a minimal setback requirement along scenic coastline would be a contrary to the Coastal Zone Management Act policy regarding view plains. The County needs to have an enhanced not a weakened shoreline setback requirement to protect our coast from the visual blight, a development on both sandy and rocky shorelines. There is absolutely no justification for weakening Kaua'i's current shoreline setback law and greatly reducing the current minimal protection of Kaua'i's scenic coastal environment by decreasing the one hundred (100) foot setback at elevate rocky shorelines and along shorelines that have not had coastal erosion studies. Section 8-27.3 of Bill No. 2461 needs to be amended to eliminate its detrimental exemptions. Thank you very much.

Council Chair Furfaro: Thank you. We have a question for you, Judy.

Ms. Dalton: Oh, yes.

Council Chair Furfaro: JoAnn.

Councilmember Yukimura: Thank you, Judy. I was in Honolulu living there when you folks brought that lawsuit in.

Ms. Dalton: Yes.

Councilmember Yukimura: It was a tremendously beneficial effort. So, thank you for that.

Ms. Dalton: Thank you.

Councilmember Yukimura: If the one hundred (100) feet may not be sufficient to protect aesthetic considerations, what criteria would you suggest?

Ms. Dalton: The criterion that we used when we were in negotiations with Keālia Plantation owners/developers was if the natural shoreline and bluffs, and the view that was at Donkey Beach at that time, if that was to be protected then, it would be okay. So, we went out there on several visits with Ray Chuan and he would be down at the bottom and he would have his walkie talkie and then we would be at the top with the Planning Department, and we are saying with a really high stick with something at the top, we kept on going back and back and back. Ray was down there and we would say, "Well, can you see us now? Can you see us now?" We kept on going back as far we possibly could, and when he said, "Okay, we do not see you now" for each and every lot we did this, and the Planning Department was there to mark each and every lot about how far it had to be for each lot for it not to be seen on and along the shoreline as it says in Chapter 205A.

Councilmember Yukimura: Was it not a lot more than one hundred (100) feet from the shoreline?

Ms. Dalton: Yes.

Councilmember Yukimura: Okay. So, actually, this will not protect against those issues.

Ms. Dalton: Well, I think the idea would be for it to have the same kind of criterion to keep the visual plain and the natural environment intact.

Councilmember Yukimura: That is why I am asking. Okay. Thank you.

Ms. Dalton: Thank you.

Council Chair Furfaro: Thank you. Quick question.

Councilmember Rapozo: Mr. Kagawa introduced his amendment earlier, and he talked about scenarios where the project area would be *mauka* of a highway of structures, and although the property may abut, what is your position on that?

Ms. Dalton: I am sorry. I was not here when he...

Councilmember Rapozo: Oh, well what he is saying is that removing not abutting this shoreline where structures and/or prohibited activities are proposed within approximately five hundred fifty (550) feet or the shoreline. The Bill as it is written now, if you are not abutting, let us say your property sits on the *mauka* side of the highway that is between the project and the ocean, and you have development that is already existing, you have a structure, and the project is less than five hundred fifty (550) feet, that it would require a shoreline certification. What would be your position on that?

Ms. Dalton: I am not too sure I really understand the question.

Councilmember Rapozo: Okay. Right now, let us use Kekaha for example. Kekaha, you have the beach or the rocks, whatever part of that beach you are on.

Ms. Dalton: Yes.

Councilmember Rapozo: You have the highway, and then you have private property.

Ms. Dalton: Okay.

Councilmember Rapozo: Right now as it is written, if you are a landowner that you are on the *mauka* side of the highway and your property extends up several hundred feet, five hundred (500) feet, six hundred (600) feet, one thousand (1,000) feet. Anyway, and you want to get a project, you want to build something and your project site would be obviously, on the *mauka* side of the highway, and may even be behind structures that are already built. This would remove the requirement to have a shoreline certification.

Ms. Dalton: If it was on the *mauka* side of the highway, it seems like it puts that in kind of a different category.

Councilmember Rapozo: Yes, and I agree, and that is why this amendment makes sense because it would not make sense to require a landowner to

go through the hassle of a shoreline certification if it is not going to matter because there is the road, there is the State highway, and there are structures in between.

Ms. Dalton:
road is really, really close...

Okay. Well, in some situations maybe the

Council Chair Furfaro: Excuse me, may I ask, rather than getting synopsis and so forth, read the amendment, be prepared to respond to Mr. Rapozo's question. It is a bonafied one, but we are not going to sit here and have time to measure your opinions and ask queries. That is why we are deferring this. This amendment has not been introduced, but I think you know that Mr. Rapozo has a very pointed question on your opinion. I am sorry, Mr. Rapozo. I would just ask rather than have dialogue about other conditions and measurement...

Ms. Dalton: Thank you very much.

Councilmember Rapozo: Bye.

Ms. Dalton: Bye.

Council Chair Furfaro: Next speaker.

(Councilmember Bynum was noted as not present.)

Ms. Fountain-Tanigawa: That was the last registered speaker, Chair.

Council Chair Furfaro: Okay. So, my intention is...is there someone in the back that wanted to speak? Tom, come right up.

TOM SHIGEMOTO: Good afternoon. For the record, my name is Tom Shigemoto. I am not representing anybody right now, but I work for Alexander and Baldwin (A&B), and Kukui'ula Development is our project. I believe, I testified back in January when this Bill was first introduced. I will keep it short. I am very sorry. I know you have a full slate, but as a member of this working group, we vetted a lot of the issues that had been raised today and some of the amendments has been brought forth as a result. Now, we as a group understand that each, I mean, not everybody agrees. So, everybody has the opportunity to express their opinions, try and lobby the Council to get their point across, and I think that is why Caren, Barbara, and Carl, well, not Carl, what I am doing right now. So, I have stated before and I agree with the amendment that Councilmember Kagawa introduced because that was one of the very first points I made when I made my testimony, that we, Kukui'ula in particular, should not be subject to the Shoreline Setback Ordinance because we are not shoreline property. I will keep on reiterating that, and if it does not pass, it does not pass. I can understand that. Now, I think we are kind of forgetting the big picture or the reason why these amendments are necessary. Basically, when somebody comes in for their interior renovation of a building whether it be a house or an industrial building, reroofing a structure, you go talk to your County Parks Department and see what they are going through for a donated park bench. To get a shoreline determination for something like that is ludicrous, but that is what the law is today. Now, I have to, I mean, laws are there to protect and I understand that the Shoreline Setback Ordinance is to protect from coastal erosion and hazards, and protection of property. Now, another thing that I think is being forgotten is that you are disregarding the property owner's rights. Now, I think those right are protected by the Constitution of the State of Hawai'i

and you are diminishing the size of the house that he can build and the setback that he can build on. We are talking about Cliffside properties, Numila, Kaua'i Coffee, fifty (50) foot bluffs. We do an improvement by the factory and you have to get a shoreline determination. Does that make sense?

Ms. Fountain-Tanigawa: Three (3) minutes.

Council Chair Furfaro: That is three (3) minutes, Tom. You can continue.

Mr. Shigemoto: I am almost done, but I really want to stress to look at these things and not get distracted by view aesthetical because there are the SMA regulations and the CZO, that can control it. Last week, Mike Dahilig was here saying that he has tools to address these things. Another tool that he did not mentioned was the development plans. The view plains at Crater Hill at Kīlauea, I believe, was addressed in the Kīlauea Development Plan, how to protect the public's view from those gregarious homes that are built. I am sorry if anybody lives on that hill.

(Councilmember Bynum was noted as present.)

Mr. Shigemoto: When I was on the Planning Department, we went five (5) miles on the highway to look back at Crater Hill to see what kind of impacts those homes on the hillside would be, but this is not even shoreline. This is not shoreline setback. This is view aesthetics of a very significant natural resource. So, the County has tools to address these things, but it should not be the Shoreline Setback Ordinance. It is the SMA regulations, it is the CZO, and development plans. That is all I want to say, and I thank you for the opportunity to present my testimony.

Council Chair Furfaro: Thank you, Tom. I also want to say that there is a need to have this vetted at the full Council.

Mr. Shigemoto: Yes.

Council Chair Furfaro: And the fact of the matter is, I did not send it back or do not want to send it back to Committee. How long have you been on the *ad hoc* Committee?

Mr. Shigemoto: About ten (10) months.

Council Chair Furfaro: Ten (10) months.

Mr. Shigemoto: Longer maybe. When you get old, you forget. I am saying maybe ten (10) or eleven (11) months. It may be longer.

Council Chair Furfaro: So, I want to make sure you understand. We need to finalize this Shoreline Bill and have it out on the table. Those who voted where they voted in Committee, they will have an opportunity to reconsider their vote based on the discussions, your points are well taken, but I am trying to move this to a point that everybody can see what the discussions are.

Mr. Shigemoto: I understand, Chair.

Council Chair Furfaro: Mr. Bynum.

Councilmember Bynum: Tom, I wanted to thank you for your testimony. You kind of covered a lot of different elements in it, but my questions is you recognized that a lot of the...that is not being contested. There is a lot in this Bill that will address those issues, get rid of those absurdities and give more discretion to the Planning Director to not make these jump through hoops. You recognized that there is support, I think, from your working group for many elements that do that, yes?

Mr. Shigemoto: Yes.

Councilmember Bynum: Okay, and so when we get specific about these bright line amendments and things, they are different. I just wanted to say I am very much in support of your testimony, and I believe that is why this Bill is so important, that the elements that are no longer in dispute, need to get out there and done to make our Planning Department run more efficiently and to make developers and landowners have much more clarity about what they can and cannot do. So, do you acknowledge that this Bill we have these areas that we have to address, but the areas that we are not contesting are big improvement for landowners, correct?

Mr. Shigemoto: Yes, I recognize that. I believe the first time I testified I said that this is a huge improvement over the current Bill. So, I was talking in support of the Bill as amended.

Councilmember Bynum: Right.

Mr. Shigemoto: Now, we have a multitude of more amendments so I just do not want it to get blown out of portion or expanded beyond what the scope or what the Shoreline Setback Ordinance is supposed to do.

Councilmember Bynum: Right, and I appreciate that, Tom, and I appreciate your work on the Committee because you have a unique perspective having been on both sides of the issue. You worked for them and gave great service at our County. It gives you a special perspective.

Mr. Shigemoto: Well, thank you.

Councilmember Bynum: And is has been very much appreciated.
Thank you.

Mr. Shigemoto: Thank you.

Council Chair Furfaro: Thank you, Tom.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: The fact of the matter is everybody has heard earlier, I do want to refer this Bill to October 22nd. I am open for comments from members. Mr. Kagawa.

Councilmember Kagawa: I will just really try and keep it brief. I think when you look at what is being said by Carl, it is true what he says. His points are valid, but that speaks for certain instances and to put the language in there to affect every single lot that comes through, I do not know if Carl's statements fits everyone equally. If you have a ten thousand (10,000) square foot lot, just a regular homeowner, not a rich person, abutting the shoreline on a cliff, on a bluff, and the lot is one hundred (100) feet by one hundred (100) feet, then you cannot build. So, I mean, is that the kind of laws that we want that a person with a ten thousand (10,000) square foot lot on a bluff cannot build because we address the concerns that we have with Mr. Omidyar's project applies to everybody? I mean, that is what we talk about. Unintended consequences. I for one will never own a bluff property. I do not think any of my family will ever own one. A lot of the bluff properties are agricultural lots or they are owned by rich developers. I think developments can be controlled, like Tom said, in the appropriate venue. At the Planning Commission, Mike has a lot of tools there to control developments that will come forth. If Mike is not the Planning Director, I think it is that critical that we get highly skilled and people that really have Kaua'i in their heart kind of Planning Directors. I think they can control these big developments from really spoiling the view plains that we all want. So, while I totally agree with Carl and Barbara, you folks, on what the intent of what we want to accomplish. I do agree with you folks, but I do not agree that the one hundred (100) feet applies equally to everybody, the unintended people. I think Councilmember Yukimura has a potential amendment to go from forty (40) feet to sixty (60) feet. That is an additional thirteen (13) yards. Some of you may feel like...oh, wait. Twenty (20). We are adding twenty (20), so twenty (20) divided by three (3) is seven (7). That is an additional seven (7) yards. I think it is something. Sixty (60) is closer to one hundred (100). So, at least we have a little bit of compromise, and the person with that ten thousand (10,000) square foot lot maybe can build. He might build a really narrow long house, but I think at least it is better than the forty (40). So, at least we have a possible potential amendment that could maybe improve some of the measures that we hope to accomplish. I think one hundred (100) feet is unreasonable and I think the unintended consequences is the reasons why I am hesitant. Thank you, Chair.

Council Chair Furfaro:
to October 22nd? Mr. Bynum.

Okay. Anyone else before I ask to refer this

Councilmember Bynum: I think this was a helpful day. I think many of us last week expected we have this one (1) last amendment to deal with and were not aware of these others. I think the outcome is a good one to give us time. I want to comment on some of the testimony today. I think Carl's testimony and the Sierra Club, including Judy's, is just right on the mark. There is nothing we can do to take away from some of the facts that they have outlined there. This bright line amendment is...we know that there will be negative consequences almost immediately. The testimony that Judy presents today, I was not in O'ahu then. I was here. I followed that very closely and it is a perfect example of how the SMA, Planning Commissions, and the current regulations can and in some circumstances not protect us. We have those there. I am very interest in Councilmember Rapozo's questions today about can you build right up to the bluff. I mean, he gave an example of like, well, if it sits right here, you could build it right up to the bluff. Well, I think in those circumstances that is when we would try to invoke the SMA things and try to use that tool, which has just not been a successful and well used. There is just too many exemptions. So, this is critically important. You do not go back on this. I have the example of Po'ipū. Anybody who drives into Po'ipū, look at

the landscape, and there is this house new the crater that is sticking up a full story above everyone else, right? When it was happening me and others, mostly people in Kōloa were screaming. It was like, what the landowner did was build grade giant boulders and build a grade up twenty (20) feet, and it was like a loop hole, but guess what? That house is still there. I know it must drive Louie Abrams crazy every time he drives into Kōloa because to me, it is just...and I do not want anymore of those landmark icon of failure on Kaua'i again because we are passionately in love with our view plains and beaches. To see something just spoiled like that, you do not go back. Once you divide property lines and build buildings, then the landowner rights comes in. Tom, the landowners have tons of rights, but the government has the right to restrict the economic benefit of a piece of property, not take it away completely, but restrict if it is in the better public purpose. So, it will be great to work this out, hopefully to a conclusion because I really want this Bill because of what we were talking about with Tom where the whole group agrees on very good and important improvements that are not being contested here by any of these amendments. Thank you.

Council Chair Furfaro: Anyone else? If not, can I have a motion to refer to October 22nd?

Ms. Fountain-Tanigawa: Chair, that would be to defer.

Councilmember Yukimura: Defer.

Council Chair Furfaro: It is defer. Okay. Then, if it is a motion to defer, there is no more testimony after that. Go ahead.

Councilmember Yukimura moved to defer Bill No. 2461, Draft 2 to the October 22, 2014 Council Meeting, seconded by Councilmember Kagawa, and unanimously carried.

Council Chair Furfaro: Okay, this is deferred until October 22nd. Before I take a quick break, I want to just approve the Legal Document that is on our agenda today if I can.

Ms. Fountain-Tanigawa: This is on page 3, Legal Document.

LEGAL DOCUMENT:

C 2013-271 Communication (07/16/2013) from Ian K. Jung, Deputy County Attorney, recommending Council approval of a Grant of Pedestrian and Parking Easements relating to Kahuaina Plantation Subdivision (S-2007-02) and Kahuaina Plantation Subdivision Phase II (S-2009-15):

- Grant Of Pedestrian And Parking Easements; concerning real property identified as Lot 15-A (TMK (4) 5-1-003:006), Lot 15-D (TMK (4) 5-1-003:032) and Lot 15-K (TMK (4) 5-1-003:039)

Councilmember Kagawa moved to receive C 2013-271 for the record, seconded by Councilmember Yukimura.

Council Chair Furfaro: A motion to receive and a second. Discussion members? You have discussion before I ask the other question to the public?

Councilmember Yukimura: Oh, no, testimony first.

Council Chair Furfaro: Any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide testimony, the meeting was called back to order, and proceeded as follows:

(Councilmember Bynum was noted as not present.)

Councilmember Yukimura: Mr. Chair, I feel like it might be in order to have our County Attorney explain the status of this document.

Council Chair Furfaro: The process?

Councilmember Yukimura: So that the public understands.

There being no objections, the rules were suspended.

Council Chair Furfaro: Can I have Mr. Jung up, please?

Mr. Jung: Good afternoon Council Chair and members of the Council. Deputy County Attorney, Ian Jung.

(Councilmember Kagawa was noted as not present.)

Councilmember Yukimura: Yes. May I?

Council Chair Furfaro: You have the floor.

Councilmember Yukimura: So, we have been informed that there has been a changed on status on the subdivision and perhaps you could describe what has happened and also the consequence of that to this public easement document.

Mr. Jung: Okay. As many of you know, we have been working on this grant of easement access for public use down to the beach down at Lepeuli or some people refer it to Larsen's Beach. The access was in a position of a condition for a subdivision that occurred in Waipake. That subdivision was further to Kahuaina Plantation I and II.

(Council Chair Furfaro was noted as not present.)

Council Chair Furfaro, the presiding officer, relinquished Chairmanship to Councilmember Chock.

Mr. Jung: The developer has since sold the property and prior to the County's acceptance of the grant of easement, the developer's buyer who is now, I believe, Kahuaina Holdings LLC, has moved to rescind or what we call under our legal language, revoke the subdivision. So, all of the entitlements that run with the project has since been revoked. As with any subdivision comes a multitude of conditions, and one of those conditions in the subdivision was to provide access, but now that the subdivision has been revoked, there is no longer a requirement to provide access to the beach down there. Just for the public's

avocation for those of you who are watching, there is still access not particularly onto that property, but near that property which goes down through Waioli property and the County's lot road, and you can traverse down our own lot road and then it eventually leads to a trail to get to Larsen's Beach or Lepeuli Beach.

Councilmember Yukimura: So, I think we all regret that this matter was not acted on sooner, although we did delay it at the request of the public.

(Council Chair Furfaro was noted as present.)

Councilmember Chock returned Chairmanship to Council Chair Furfaro.

Councilmember Yukimura: I think we need to also understand that one of the biggest concerns of the public, which was the subdivision itself and the eighty (80) units that were potentially possible on that land is now gone.

Mr. Jung: That is correct. There are two (2) things when you look at lot density. You have lot density and you have subdivision lot density. A lot will have density attached to it, but if you do a subdivision then you get extra density based on those newly created lots. In this particular case, once they removed the density through the subdivision, we have a recent Bill in 2011 or 2010 sorry, that prohibited in excess of five (5) units on any open district lot. So, now the density would be considerably less than what would have been allowed under the older subdivision from 2008. So, if the developer ever attempts to re-subdivide the property, the density on that property would be significantly less.

Councilmember Yukimura: Do you know what it would be?

Mr. Jung: It all depends on lot configurations. It depends on how they propose their subdivision.

Councilmember Yukimura: Okay.

Mr. Jung: But as of right now, from what I understand, the developer has no intent to further subdivide that piece of property.

Councilmember Yukimura: Okay. So, at this point, what is anticipate is one (1) unit potentially?

Mr. Jung: I do not know. I mean, the property does have more density than one (1) unit.

Councilmember Yukimura: Okay. Alright.

Mr. Jung: But it would not be what we call the subdivision density, which we get from the subdivided lots.

Councilmember Yukimura: Which was potentially about eighty (80) units?

Mr. Jung: Correct.

Councilmember Yukimura: Okay. Thank you very much.

Mr. Jung: Sure.

Council Chair Furfaro: So we are all clear, it was about eighty-four (84) units. I also want to make sure we have some feedback from you as it relates to the deeded *kuleanas* that are in that area as actually counting as part of the available density. I would like to get some clarification, but I do not need it, but in a piece of correspondence.

Mr. Jung: Sure.

Council Chair Furfaro: Thank you. Anymore questions for Mr. Jung? JoAnn, than you for those questions. You have no more? You have no more questions?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: So, we have this particular item to be received. We have a motion to do such.

The motion to receive C 2013-271 for the record was then put, and unanimously carried (**Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Bynum and Councilmember Kagawa were noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

Council Chair Furfaro: Recorded as five (5) please. Then, let us finish this other item up before we go into Executive Session. Let us read Bill No. 2540, please.

Ms. Fountain-Tanigawa: This is on page 4, Chair Furfaro.

Bill No. 2540 – A BILL FOR AN ORDINANCE AMENDING ARTICLE 17, CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO NONCONFORMING USE CERTIFICATES FOR SINGLE FAMILY VACATION RENTALS

Council Chair Furfaro: There is a motion here that is suggested for an approval.

Councilmember Chock moved for adoption of Bill No. 2540 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Yukimura.

Council Chair Furfaro: Discussion members before I ask for a testimony? Is there anyone in the audience that wishes to testify on this Bill No. 2540?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: This is as simple voice approval? No, this would be a roll call vote. We have members that are outside the room, so can I try and get them so I can take a vote?

Council Chair Furfaro: Okay, well, I will just call for the vote, please, on Bill No. 2540.

(Councilmember Kagawa was noted as present.)

The motion for adoption of Bill No. 2540 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6*,
AGAINST ADOPTION:	Rapoza	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Bynum, Councilmember Kagawa and Councilmember Yukimura is noted as voting silent, but shall be recorded as an affirmative for the motion.)*

Council Chair Furfaro: *Les tombei.* How many silent votes do we have, and explain the rules here?

Ms. Fountain-Tanigawa: We have two (2) silent votes, one (1) no.

Council Chair Furfaro: I have two (2) silent votes, one (1) no. How many ayes?

Ms. Fountain-Tanigawa: Two (2).

Council Chair Furfaro: Two (2)? Okay. Yay. Go ahead, we will count the two (2) as going with the motion, okay? So, it is 5:1. I think that completes our schedule for today, right?

Ms. Fountain-Tanigawa: Chair, we do need to...

Council Chair Furfaro: I would like to call up the County Attorney again or do we need to do that?

Ms. Fountain-Tanigawa: I believe they have read everything and we can go right into Executive Session, but we do need to come out and vote in open session on the various items.

Council Chair Furfaro: Yes. I do want to say that our plan will be to come back after three (3) additional Executive Sessions. We will go right back in ten (10) minutes. Ten (10) minutes recess, back in Executive Session.

There being no objections, the Council recessed to convene in Executive Session at 4:43 p.m.

The meeting was called back to order at 5:44 p.m., and proceeded as follows:

Council Chair Furfaro: We are back from Executive Session. We have some business to take care of in the public as it relates to a series of about five (5) Executive Sessions. So, Jade, I will let you lead us through the first one if you can read it, and then go from there. Is a County Attorney present? There he is. No. I see you, that is good. Okay, let us go.

Ms. Fountain-Tanigawa: Chair, this is on page 2.

C 2014-252 Communication (09/12/2014) from the County Attorney, requesting authorization to expend additional funds up to \$38,000 for Special Counsel's continued services to represent Henry Barriga and Sherwin Perez in Lynell Tokuda, et al. vs. Chris Calio, et al., Civil No. CV13-00202 DKW-BMK (U.S. District Court), and related matters: Councilmember Bynum moved to approve C 2014-252, seconded by Councilmember Yukimura.

Council Chair Furfaro: Okay, I have a motion and a second. Any discussion from the members?

Councilmember Hooser: Chair?

Council Chair Furfaro: You have the floor, Mr. Hooser.

Councilmember Hooser: Yes, earlier this morning I had asked the County Attorney for reporting on the cost to-date for on this item and the next item, and they said that they would have that cost for us. I would like to ask them that question sine I said I was going to ask them that question earlier.

Council Chair Furfaro: Certainly. Mauna Kea, I am going to suspend the rules and I believe we have questions that you should in fact have anticipated from the query earlier this morning.

Councilmember Hooser: And to be clear, Chair, that this is the same question for every item that we are appropriating funds for.

Council Chair Furfaro: Okay.

Councilmember Hooser: I think the public needs to know what all of these various...we had seven (7) or eight (8) different ones on our agenda and they all cost money. I think it is a legitimate question for the public.

Council Chair Furfaro: We have five (5) left to deal with now.

Councilmember Hooser: Right.

Council Chair Furfaro: Okay. Mauna Kea, welcome. Could I ask you to introduce yourself, and it seems that this question is going to be repetitive through all of the Executive Sessions. So, I am going to ask you to introduce yourself, and then I am going to turn the floor over to Mr. Hooser.

There being no objections, the rules were suspended.

Mr. Trask: Aloha, Chair and Honorable Councilmembers. First the record, First Deputy County Attorney, Mauna Kea Trask.

Council Chair Furfaro: Okay. Mr. Hooser, you have the floor.

Councilmember Hooser: Okay, this is for C 2014-252, and you can combined C 2014-252 and C 2014-253. We are being asked to appropriate seventy-six thousand dollars (\$76,000) additional funds. My question this morning, and the County Attorney did not have the answer to it, was how much have we appropriated to-date? So, I believe you have that answer for us because we had spoken about it earlier.

Mr. Trask: Correct. This is for the fees and costs to represent Barriga and Perez in this case. Since March 12, 2014, which was the first authorization, we have spent twenty-five thousand two hundred thirty-nine dollars and ninety-six cents (\$25,239.96).

Councilmember Hooser: Okay. C 2014-253 also?

Mr. Trask: For that agenda item, this is for costs to represent Sergeant Chris Calio. Since March 27, 2013, a total of one hundred five thousand three hundred ninety-five dollars and twenty-four cents (\$105,395.24). Again, for the record, the County Attorney's Office, given the facts and circumstances of this case, we believe this is money well spent.

Councilmember Hooser: Right, and I am not debating that. I am just trying to find out what the expense was. So, for the two (2) that would be one hundred thirty thousand dollars (\$130,000)?

Mr. Trask: Whatever the math is, correct.

Councilmember Hooser: And then we are adding another...what are they saying?

Council Chair Furfaro: Seventy-six thousand dollars (\$76,000).

Councilmember Hooser: Seventy-six thousand dollars (\$76,000). Okay. Okay, thank you very much. Do you want to vote on the items as we go or do you...

Council Chair Furfaro: No, I am going to vote on the items as we go.

Councilmember Hooser: Okay.

Council Chair Furfaro: Mauna Kea, as you know, I went back and collected the appreciated reporting document that I sent to the County Attorney going forward, and I wanted to thank you for giving us the summary report that you did, but we are going to vote on these items one at a time. Any further questions, members? Mr. Kagawa. No? Okay. To the County Clerk, Madam Clerk, I would like to call a vote on the first two (2) items. Oh, more discussion? Yes, go ahead.

Councilmember Bynum: For sake of time, I will try to speak just this one (1) time. I intend to vote "yes" on all of these Special Counsel requests. The County Attorney and the Council does a close scrutiny of the need to hire Special Counsel. The first two (2) cases are to defend police officers that were working on duty, and there is no question I think from anyone that this kind of defense, we are always going to support. The other issues that are on this agenda have to do with

personnel and internal matters, and those are separate. Unfortunately, in those matters we need to hire Special Counsel as well at times, but there is a difference between them. So, why we were having discussion about cost today is because the public is increasingly concerned. I am hearing from them about the number of cases we have and that when they see us at Council, they do not understand just by our postings, what is going on. So, I think we are coming into a new era where we are going to have just a bullet point summary for the public so they know what the case is about. We also have a lot of concerns that I share, that the volume...so, these first two (2) cases are in a separate category. They are about police officers in the course of duty and we are going to almost...well, I will speak for myself. We are always going to defend our employees in these circumstances, but the public is also concerned about this proliferation for many years of Civil Rights, hostile work environments, and sexual assault cases, that are a very high...sexual assault. Sexual harassment, that are very high volume in our County for a very long time. We need to look at that. We need to figure that out why it is happening. It was a really big issue couple terms ago and we changed our policies, but it does not appear to be working because we are having this calculative of these types of cases. So, I think in that general term, we need to look at that as a County, and understand it and quantify it. The public needs to understand that we are above the norm for those types of cases. So, I wanted people to understand why the norm seems to be changing. The public is requesting more information when a lot of this information is public information as we discussed this morning, but the motive is just more transparency. Anyway, thank you.

Council Chair Furfaro: Mr. Hooser.

Councilmember Hooser: A brief follow-up.

Council Chair Furfaro: Your microphone, please.

Councilmember Hooser: Just a brief follow-up. To put it into context, and I see we have a lot of people here in the audience, and I appreciate you coming down to be a part of this system. I have asked twice for the County Attorney's Office to provide me a summary of Special Counsel, these outside attorneys that we hire, costs. Twice I have asked for a total of settlements that we have done over the past year, and I have yet to get that answered. So, my only option as a Councilmember is to ask those questions when they come up here. It is not limited to this case. It is every single case. I think the people need to know what these cases cost us and what they are about. So, it is not a judgment on the case, but it is a judgment on...it is a legitimate question for the public to know and for us as Councilmembers to know. So, that is the reason I am asking the questions. Finally, and this will be it for me, we do have on October 8th, we tried to get it on earlier, but the County Attorney's Office was not cooperative with it, but it is my understanding that it is scheduled for October 8th now which is the County Attorney to come forward and to provide our Council with a discussion on the various employee grievances and other issues that we are going to be voting on in a few minutes. We have not been getting the information we needed, so we have to ask the questions here at the microphone. So, thank you, Chair.

Council Chair Furfaro: So, Mauna Kea, I just want to point out again, and I am just going to summarize this, the County Attorney has from me, dated on the 5th of July 2012, the expected standards for briefing of the County Attorney's Office to the Council and there are four (4) pieces of correspondence on that or which you have a copy of. We are all going to strive to do a better job at that

and live within those standards. I want to thank you for your summary by lunchtime on these project, but now I am going to ask you if you would step away from the microphone because I would like to ask, before I call for a vote, if there is anyone in the audience that would like to have testimony to this item today. May I do that? Thank you. Is there anyone in the audience that wishes to testify on items that are in front of the County right now dealing with C 2014-252 and C 2014-253?

There being no one to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Okay, Mauna Kea, there is no one there. I will let you come back. Mr. Kagawa.

Councilmember Kagawa: Are we in discussion?

Council Chair Furfaro: We can be in discussion, yes.

Councilmember Kagawa: Well, I just have, to summarize it, I talked about this case a little bit as it hit the newspapers. It is not a lawsuit against Lynell Tokuda or against her. It was about Richard Lewis and what happened on that uneventful day, but it is the job of these officers to keep the public safe. Sometimes, unfortunate events happen and I think for us to sit here and really put it to the officers as though something went wrong, is not our intention here. I think the officers definitely do not want these kinds of events to happen. It is a very unfortunate incident, but when it does happen, I trust that these people are doing what needs to be done to keep the public and themselves safe. Certainly in this case, I do not doubt that what the officers did, they needed to do. Whatever ends up in the outcome of the case at court will come out, but as far as myself, I would never want to be an officer because these types of cases come up and it makes the job very unattractive when these types of cases come and you have to have your name dragged down because of these kinds of events. In that way, I thank the officers for taking on this tough duty. I thank you for your work out in the community for all of these years, and I continue to support you. Thank you.

Council Chair Furfaro: Thank you for your comments. On that note, I would like to, if I can, call for the vote unless there is any further testimony. Councilmember Yukimura, you have the floor.

Councilmember Yukimura: Well, I just want to affirm for the record that there is no question in my mind that we have to pay for full defense for our officers who are in the line of duty. I hope there is no question about that.

Council Chair Furfaro: Mr. Rapozo, did you want to share?

Councilmember Rapozo: I was not going to speak, but I see Sergeant Calio here in the audience and I send our prayers your way, your family, and what you had to experience. Most people never have to experience it. So, with that, just please accept our prayers and blessings your way. Lawsuits are going to happen. I mean, we go through settlements, I mean, lawsuits all the time whether somebody hits a stump at the park. It is something that is just the nature of this business that we do called government. What I heard Mauna Kea say, I think, is probably the most refreshing thing I heard all day in this very long day, was that this is money well spent. I cringe sometimes when I hear questions about police and I am not going to go there. I am just going to say that when these guys go to work every

day, and you heard me talk about this many times, that it is almost like we do not think about them until something happens. Something happens to us or a family member. When something like this happens, unfortunately, this is our time to stand behind our officers and support them and defend this as far as we have to and at any cost because I think they deserve that, and I think we as a Council, as an Administration, we just have to do that, and let a jury decide at some point. Nobody knows. Nobody was there. None of us here were there that night or that day, whenever it was. So, I do not think we are in any position to judge. That is why the court system is there and I appreciate you, Mauna Kea, making that statement because I think it means a lot, not just to us, but to the people in the back. So, obviously, I am going to support this. It is a relatively small amount at this point. It is going to be more. There is going to be more, but obviously, I think you heard from everybody here today that I think we all support that effort and really support Sergeant Calio and everybody else that is affected by this because it is not just him. It is his family. It is the people he works with, their families. It is just a horrible thing, and just know that *mahalo*. Thank you.

Council Chair Furfaro: Okay. I am going to ask that we vote on these in seriatim, and again, this is the right thing for us to do for the right reasons. May I have a roll call vote on item C 2014-252, please?

The motion to approve C 2014-252 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Furfaro: 7:0. Thank you. Let us go to C 2014-253, please.

C 2014-253 Communication (09/12/2014) from the County Attorney, requesting authorization to expend funds up to \$38,000 for Special Counsel's continued services provided for Defendant Chris Calio in Lynell Tokuda, et al. vs. Chris Calio, et al., Civil No. CV13-00202 DKW-BMK (U.S. District Court), and related matters: Councilmember Kagawa moved to approve C 2014-253, seconded by Councilmember Yukimura.

Council Chair Furfaro: I have a motion to approve. I have a second. I would like to go right to a roll call vote, please.

The motion to approve C 2014-253 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Furfaro: 7:0. Okay. Mauna Kea, thank you very much. We are going to move on to other Executive Session items now.

Ms. Fountain-Tanigawa: The next item is C 2014-254.

C 2014-254 Communication (09/12/2014) from the County Attorney, requesting authorization to expend funds up to \$20,000 to retain Special Counsel to represent the County of Kaua'i and Robert F. Westerman, Kalani Vierra, and Norman Hunter in their official capacities for the County of Kaua'i, Kaua'i Fire Department in Carl Ragasa vs. County of Kaua'i, et al., Civil No. CV14-00309, (Fifth Circuit Court), and related matters: Councilmember Yukimura moved to approve C 2014-254, seconded by Councilmember Bynum.

Council Chair Furfaro: I have a motion to approve and I have a second. I will give you the floor when we have some departures. Go ahead, you have the floor, Mr. Hooser.

Councilmember Hooser: Yes, on C 2014-254, the amount is for twenty thousand dollars (\$20,000). This is the initial, the very first amount. Is that correct?

There being no objections, the rules were suspended.

Mr. Trask: Correct.

(Councilmember Kagawa was noted as not present.)

Councilmember Hooser: And you can answer this. It is probably the answer to the same problem. Do you have any expectation of how much this will end up costing the County?

Mr. Trask: For this case, not at this stage. No.

Councilmember Hooser: Okay. Thank you.

Council Chair Furfaro: Further discussion?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: If not, I would like to have a roll call vote on C 2014-254.

(Councilmember Kagawa was noted as present.)

The motion to approve C 2014-254 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Furfaro: 7:0.

Ms. Fountain-Tanigawa: The next item is C 2014-255.

C 2014-255 Communication (09/12/2014) from the County Attorney, requesting authorization to expend funds up to \$20,000 for Special Counsel to represent the County of Kaua'i in Christina Pilkington vs. County of Kaua'i, et al., Civil No. 14-1-0123, (Fifth Circuit Court), and related matters: Councilmember Yukimura moved to approve C 2014-255, seconded by Councilmember Rapozo.

Council Chair Furfaro: I have a motion and a second. Discussion members? Mr. Hooser.

Councilmember Hooser: I would hate to be redundant, but it is the same question. This is the initial twenty thousand dollars (\$20,000) for new Special Counsel, and is it correct to say we are not sure how much this is going to cost us either?

There being no objections, the rules were suspended.

Mr. Trask: Correct.

Councilmember Hooser: Okay, and this is an employee grievance, essentially?

Mr. Trask: I think it involves a personnel matter. I would not say it is a grievance because I do not believe there ever was a grievance for this case.

Councilmember Hooser: Okay. So, personnel matter. Thank you. Thank you, Chair.

Council Chair Furfaro: Thank you for the confirmation as it being a personnel matter. Further discussion?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: If not, roll call please.

The motion to approve C 2014-255 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Furfaro: Thank you. Item C 2014-256 now, please.

Ms. Fountain- Tanigawa: The last and final item is C 2014-256.

C 2014-256 Communication (09/12/2014) from the County Attorney, requesting authorization to expend funds up to \$20,000 for Special Counsel to represent the County of Kaua'i in EEOC Charge No. 486-2014-00468 (United States Equal Employment Opportunity Commission), and related matters: Councilmember Yukimura moved to approve C 2014-256, seconded by Councilmember Kagawa.

Council Chair Furfaro: I have a motion to approve and a second. Discussion? Mr. Hooser.

Councilmember Hooser: Yes, this is just to clarify. This is another personnel matter, another twenty thousand dollars (\$20,000), and another Special Counsel?

There being no objections, the rules were suspended.

Mr. Trask: Correct.

Councilmember Hooser: With no idea of what the overall cost would be at this point?

Mr. Trask: No.

Councilmember Hooser: And will each of these Special Counsels be a different attorney, different law firm?

Mr. Trask: It goes approval through a procurement professional service selection process, which is governed by Hawai'i Administrative Rules and Hawai'i Revised Statutes. So, it is not a process you can anticipate who

will get the contract or whether or not the same person will or will not get the contract because that would kind of preordain the system and make it incorrect, I guess.

Councilmember Hooser: Thank you. Thank you, Chair.

Council Chair Furfaro: Those selections are made from a preapproved list or attorneys though?

Mr. Trask: Submitted annually, correct.

Council Chair Furfaro: Annually. Thank you very much. Further discussion? Yes, Mr. Hooser.

Councilmember Hooser: I believe this is the last item on the agenda.

Council Chair Furfaro: It is.

Councilmember Hooser: Okay. I did have just some very brief remarks. Should I make them now or after we vote?

Council Chair Furfaro: I will give you the floor now.

Councilmember Hooser: Okay. We have had some extensive discussion and we have spent quite a few hours in Executive Session. I was asked during one of the breaks what my purpose was in asking these questions. I think as I have stated earlier, I just want to summarize briefly. I think the community is entitled to know more information than what they have been getting as to the nature of these executive Sessions and the cost. What is the allegation, number one, what is the cost and what is the cost to-date? I think that is basic information we owe the community every single time we spend money or we go to court to defend these things. So, that is number one. Number two, I am very concerned about the number of personnel issues that this County is involved in. If I counted correctly, there is eleven (11) different actions on today's agenda alone and that is a problem I suspect. The information I have is there is a lot more than that. This points to issues of management, issues of budget, and we need to have a more thorough discussion on this. We do have on October 8th, as I mentioned before, an agenda item with the Administration and the County Attorney to provide us a briefing on the general situation with regards to employee grievances currently pending in the various Departments, and focusing on the quantity in general nature, not specific, not people's names. The general nature. The budget implications, historical costs, and the Administration's plans and strategies to minimize the cost in the future. I think that is perhaps, the most important. We need to know. The public needs to know. What is the Administration doing to stem what is perceived by me to be an increase or be an excessive number of personnel issues? So, this is on the agenda on October 8th, and I am hopeful that the Administration and the County Attorney's Office will join us on that day and provide us with additional information, but that is why I raised the questions that I raised today. Thank you.

Mr. Trask: I would just like to also state for the record one thing and I know this body agrees with this. I just want to say this too. You are all public figures. I am a public figure. Our government records are generally

public records, however, our employees, and there are many. The majority of the people who work for the County of Kaua'i are not public figures, they are private individuals. There are State law that protects their confidentiality and their personal privacy interests, there are Federal laws that do so, and there are Collective Bargaining Agreements that cover that as well. It is always a very delicate balance in satisfying the public's right to know as well as, though, protecting the personal privacy/interest of the employees of the County of Kaua'i. I know we are all dedicated to that and ensuring that no one loses any rights, whether it is the public's right to know of the privacy interest of our employees. I know that the County of Kaua'i, my client, does take that seriously. I just wanted to state for the record.

Council Chair Furfaro: Okay. I want to make sure we all understand I copied in advance, the four (4) pieces of correspondence between myself and the County Attorney it deals with the litigation issues and how the expectations of how we handle the complaint and how we post information that we can for public knowledge will be an agenda item, and it will follow on the litigation plan that was posted on September 6, 2013. We will have a comprehensive discussion on these previous correspondences. Now, on that note, I would like to call a roll call vote on the last item here, Jade.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2014-256 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Furfaro: We have seven (7) ayes. Now on that note, I would like to adjourn today's meeting.

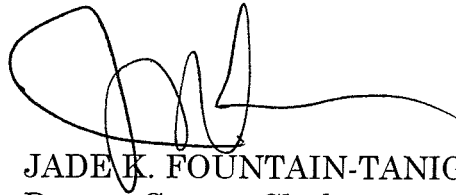
ADJOURNMENT.

Councilmember Kagawa moved to adjourn the Council Meeting, seconded by Councilmember Yukimura, and unanimously carried.

Council Chair Furfaro: Our business for today is complete.

There being no further business, the Council Meeting adjourned at 6:09 p.m.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large loop followed by several smaller loops and a long horizontal stroke extending to the right.

JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

:aa

(September 24, 2014)

FLOOR AMENDMENT NO. RK1

Bill No. 2461, Draft 2, Relating to the Comprehensive Zoning Ordinance (*Amendments to the Shoreline Setback Ordinance*)

Introduced by: ROSS KAGAWA

1. Amend Section 2 of Bill No. 2461, Draft 2, by amending Section 8-27.1 to read as follows:

“Sec. 8-27.1 Applicability.

This Article shall be applicable to all lands within the County of Kaua‘i, that are[:

(a) Abutting] abutting the shoreline where structures and/or prohibited activities are proposed within five hundred (500) feet of the shoreline[, or

(b) Not abutting the shoreline where structures and/or prohibited activities are proposed within approximately five hundred fifty (550) feet of the shoreline].”

2. Amend Section 2 of Bill No. 2461, Draft 2, by amending subsection (c) of Section 8-27.3 to read as follows:

“Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line.

“(c) Lots Included in the Kaua‘i Coastal Erosion Study. For all structures on lots that abut the shoreline and that are subject to the Kaua‘i Coastal Erosion Study, the setback shall be calculated as follows:

(1) For lots with an average lot depth of less than one hundred forty (140) feet, the setback line shall be forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua‘i Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.

(2) For lots with an average lot depth of one hundred forty (140) feet to two hundred twenty (220) feet, the greater setback of the following shall apply:

(A) Forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua‘i Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback determined by taking the average lot depth, subtracting one hundred (100) feet, dividing by two and adding forty (40) feet.

(3) For all lots with an average lot depth of over two hundred twenty (220) feet, the greater setback of the following shall apply:

(A) Forty feet (40) plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback line of one hundred (100) feet from the certified shoreline.

Table 1. (This table is included for illustrative purposes only.) Lots Included in the Kaua'i Coastal Erosion Study. The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet.

Average Lot Depth	Setback Line
Less than 140 feet	40 feet plus (70 X annual coastal erosion rate) plus 20 feet
140 feet to 220 feet	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- (Average Lot Depth minus 100 feet) ÷ by 2 plus 40 feet
Greater than 220 feet	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- 100 feet from the certified shoreline"

3. Amend Section 2 of Bill No. 2461, Draft 2, by deleting subsection (e) of Section 8-27.3 and re-lettering the subsequent subsections accordingly.

"[(e) Non-abutting Lots. If an applicant is unable to secure permission from the abutting owner to complete a certified shoreline for a non-abutting lot within approximately five hundred fifty (550) feet of the shoreline, the Planning Director may, pursuant to Sec. 8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.]"

(Material to be deleted is bracketed. New material is underscored.)
V:\AMENDMENTS\2014\CM Kagawa delete nonabutting lots PM_dmc.doc

(September 24, 2014)

FLOOR AMENDMENT NO. CM#1

Bill No. 2461, Draft 2, Relating to Comprehensive Zoning Ordinance (*Amendments to the Shoreline Setback Ordinance*)

Introduced by: MASON K. CHOCK, JR.

Amend Section 2 of Bill No. 2461, Draft 2, by amending subsection (a) of Section 8-27.3 to read as follows:

“(a) Except in either of the following two cases [or as permitted in Section 8-27.7], a shoreline setback determination shall be required for all structures and subdivisions proposed on lands covered by this Article.

(1) [In cases where the proposed structure or subdivision satisfies the following three criteria:

(A) In cases where the proposed structure or subdivision is located outside of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) V or VE flood zones;

(B) The proposed structure or subdivision is located at an elevation which is thirty (30) feet above mean sea level or greater; and

(C) The applicant can demonstrate to the satisfaction of the Planning Director that the property is clearly adjacent to a rocky shoreline such that it will not affect or be affected by coastal erosion or hazards.] In cases where the structure is permitted under the provisions of Section 8-27.7.

(2) In cases where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant’s proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant’s property, elevation, and the history of coastal hazards in the area.”

(Material to be deleted is bracketed. New material is underscored.)

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